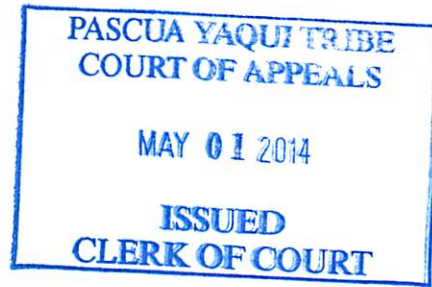


PASCUA YAQUI TRIBE  
Office of the Tribal Prosecutor  
7777 S Camino de Oeste  
Tucson, AZ 85757  
(520) 879-6257



By Frederick Lomayesva  
Deputy Prosecutor

**IN THE PASCUA YAQUI APPELLATE COURT**

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE	)	Case No. CR-14-144
	)	
Plaintiff/Appellant,	)	
	)	<b>NOTICE OF APPEAL</b>
v.	)	<b>(INTERLOCUTORY)</b>
	)	
MOLINA, SALOMON FLORES,	)	
	)	
<u>Defendant/Appellee.</u>	)	

COMES NOW the Pascua Yaqui Tribe and give notice of its filing an interlocutory appeal of tribal court order filed on April 28, 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 order of April 28, 2014. A copy of the order is attached to this notice and by this reference are made a part of this notice.

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

1. Did the court err as a matter of law in dismissing count 3 of the Tribe's Criminal Complaint?
2. Did the court abuse its discretion when it admitted defendant's jury instruction 23 that voluntary intoxication is a defense to all mental states in opposition to established law?

This matter is set for trial on May 6, 2014. It is respectfully requested that an order be issued staying the trial pending the outcome of this appeal and an expedited briefing schedule be ordered.

RESPECTFULLY SUBMITTED this 1 day of May, 2014.

  
\_\_\_\_\_  
By Frederick Lomayesva,  
Deputy Prosecutor

A copy of the foregoing Notice of Appeal was  
Delivered this 1<sup>st</sup> day of May, 2014, to:

Patricia Leon-Enriquez, Esq,  
Office of the Public Defender  
Attorneys for the Defendant



1 The Court grants the Defendant's Motion To Dismiss Count 3: Public Sexual Indecency  
2 as the Court looks to Arizona law, which is mirrored by the Pascua Yaqui Code and the intent of  
3 the law. As included in the Defendant's Reply, "The statute was clearly 'designed to protect the  
4 *public* from shocking and embarrassing *displays* of sexual activities.' *State v. Flores*, 160 Ariz.  
5 235, 239, 772 P.2d 589, 593 (App.189) (emphasis added). According to the facts presented in  
6 the probable cause statement and the criminal complaint, the only two individuals present at the  
7 time of the alleged incident were the alleged victim and the Defendant. No other person was  
8 present.

9 The Defendant, through counsel, moved the Court to amend the conditions of release in  
10 this matter for the reason that the Court dismissed Count 3 and the Defendant requested that the  
11 condition of no contact with minors be removed from his conditions of release. The Tribe objected  
12 because there continues to be an alleged minor victim in this matter. The Court finds good cause  
13 to deny the motion to amend the conditions of release.

14 Defense counsel also informed the Court that the Defendant received a cd copy of  
15 interviews conducted by law enforcement and that the transcripts of the interviews have been  
16 requested; however, the Defendant was told that he had to go through the Tribe for such  
17 transcripts. The Tribe informed the Court that he has requested the transcripts as well and that they  
18 are in the process of being completed. The Tribe suggested that the Court set a due date for the  
19 transcripts to be completed. Good cause appears to order a due date for the transcribed interviews  
20 previously provided to the parties in the form of a compact disc to be completed by Pascua Yaqui  
21 Law Enforcement to be submitted to the Tribe's Prosecutor for use by the parties by **Thursday,**  
22 **May 1, 2014 at 12:00 noon.**

23 With regard to the Defendant's Jury Instruction number 23: Voluntary Intoxication, the  
24 Court finds that the Pascua Yaqui Tribal includes clear language when it prohibits voluntarily  
25 intoxication as a possible defense when a culpable mental state is recklessness, the code does not  
26 include language which prohibits the use of voluntary intoxication as a defense when a violation  
27 of the Code calls for an intentional or knowing mental state. The Defendant's Jury Instruction  
28 number 23: Voluntary Intoxication shall be included in the jury instructions for this jury trial. The  
Court finds that this may be a matter for the Tribal Council to address in their legislative capacity.

**IT IS ORDERED** that the Court denies the Defendant's Motion to Dismiss Count 1:  
Aggravated Assault and the Court grants the Defendant's Motion To Dismiss Count 3: Public  
Sexual Indecency.

**IT IS FURTHER ORDERED** that the Defendant's Jury Instruction number 23:  
Voluntary Intoxication shall be included in the jury instructions for this jury trial.

