

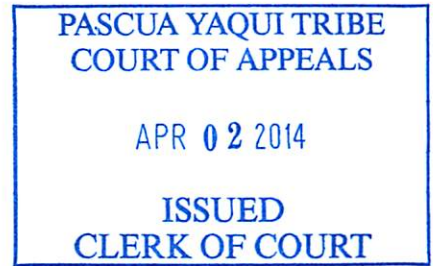
No. CA-14-001

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)).

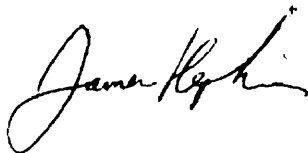
There is no general federal constitutional right to discovery in a criminal case. *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 845, 51 L.Ed.2d 30 (1977). “However, the Constitution does impose on the prosecution a due process obligation to disclose exculpatory evidence that is material on 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