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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FEB 13 2009

IN AND FOR THE COUNTY OF MOHAVE

VIRLYNN TINNELL
CLERK SUPERIOR COURT

BY: OPM DEPUTY

HONORABLE STEVEN F. CONN
DIVISION 3
DATE: FEB. 13, 2009

SC*
VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

No. CR-2007-0743 & CR-2007-0953

The Court identifies the following set of recent pleadings filed in these cases:

1. Defendant's Motion for Disclosure of Audio and Video Recordings (February 2, 2009); State's Response (February 2, 2009); Defendant's Reply (February 9, 2009).
2. Defendant's Motion for Deposition of Witness Rebecca Musser (February 3, 2009); State's Response (February 2, 2009); Defendant's Reply (February 9, 2009).
3. Defendant's Motion for Deposition of Witness Sam Brower (February 5, 2009); State's Response (February 5, 2009); Defendant's Reply (dated February 10, 2009).

As to issue #1, the State appears to agree that the defense should be entitled to receive the items indicated, as long as the State is able to obtain them from the Texas authorities. The defense Reply indicates some skepticism as to whether the desired cooperation from the Texas authorities will be forthcoming. It seems to the Court that the eventual production of the items sought will be facilitated by there being a court order in place directing that production.



S8015CR20070743



IT IS ORDERED granting the Defendant's Motion for Disclosure of Audio and Video Recordings and directing the State to comply with the requests made therein by no later than March 23, 2009.

The Court at this time declines to define in advance any specific sanction to be imposed if the State is unable to comply with this Order.

As to issue #2, it appears that the parties are in the process of working this matter out informally and seem confident of their ability to do so without judicial intervention.

IT IS ORDERED deferring ruling on the Defendant's Motion for Deposition of Witness Rebecca Musser unless specifically requested in writing to do so by either party.

As to issue #3, the State opposes the deposition of Mr. Brower because they do not intend to call him as a witness, because he may be subject to the assertion of the attorney-client privilege and because information sought to be obtained from him has already been obtained through other sources. Rule 15.3(a)(2) is not limited to persons disclosed as witnesses by either party. The rule applies to persons whose testimony is material to the case or necessary adequately to prepare a defense or investigate the offense. The State does not appear to be asserting that Mr. Brower would not fall within the above set of persons. The right to assert the attorney-client privilege probably rests with either Mr. Brower or whoever he has an attorney-like relationship with or perhaps the client who has hired an attorney who in turn has hired Mr. Brower to work as an investigator. The State is not asserting that it has an attorney-client relationship with Mr. Brower. The Court cannot rule out the possibility that such privilege may be asserted by some other person or entity, in which case the Court will have to determine whether making public pronouncements about an investigation done pursuant to an attorney-client privilege constitutes a waiver of that

privilege. The privilege certainly cannot be asserted by someone not a party to that relationship, such as the State of Arizona. As to the suggestion that the information sought has already been obtained elsewhere, it should go without saying that effective representation of a criminal defendant includes not accepting statements of witnesses at face value but seeking at the very least independent grounds for impeaching those statements. The Court acknowledges that Rule 403, Rules of Evidence, might allow it to exclude otherwise relevant evidence to prevent undue delay, waste of time or needless presentation of cumulative evidence, but the Court is certainly in no position at this time to make such a determination.

As a purely procedural issue, the Court notes that in the defense motion counsel originally requested oral argument. The State's Response made no reference to oral argument, although their prior pleadings have typically not done so. The copy of the defense Reply received by the Court was accompanied by a cover letter from Mr. Piccarreta asking the Court to rule based on the pleadings and indicating at least his opinion that no oral argument was necessary. A copy of that letter is indicated as having been e-mailed to the State, presumably on February 10, 2009. The State does not appear to disagree with the proposal that the Court rule based on the pleadings without any further oral argument.

For the above reasons, the Court determines that Mr. Brower is subject to being deposed pursuant to Rule 15.3(a)(2).

IT IS ORDERED granting the Defendant's Motion for Deposition of Witness Sam Brower. The Court will sign an Order directing him to submit to a deposition at a time and place of defense counsel's choosing if he has not submitted to a personal interview at a time

and place of his choosing within a reasonable period of time, not to exceed 45 days, from the date of this Order.

cc:

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