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BY: *psd*

2008 OCT 23 PM 4:12

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

HONORABLE STEVEN F. CONN
DIVISION 3
DATE: OCT. 23, 2008

VIRLYNN TINNELL
SUPERIOR COURT CLERK
SC

VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

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

Counsel for the Defendant has filed a Motion to Depose Texas Law Enforcement Officials, as the Court noted in its Minute Order dated October 20, 2008, and the State has now filed a Response opposing the requested depositions for the reason that it does not intend to use any evidence seized in Texas and therefore the Texas witnesses would not be material witnesses subject to deposition. The Court wonders why the State filed a 31-page response opposing the Defendant's motion to suppress if they do not intend to use any of the evidence sought to be suppressed. It seems that if the State were conceding that it did not intend to use at the trials in these cases any evidence seized in the Texas searches they would have simply filed a pleading saying so. The Court realizes that at least part of the State's Response seems to do just that, but it also goes on at significant length to address the merits of the defense motion

The Court can appreciate the dilemma faced by defense counsel. If the State is willing to stipulate that it will not seek to use as evidence against the Defendant in either of these

2 cases anything seized in the Texas search, then it may not be necessary to rule on the motion to suppress evidence seized in the Texas search and it is probably not necessary to address whether potential witnesses relevant only to that search should be subject to a deposition. On the other hand, if the State does intend to use such evidence, the legality of the Texas search does have to be ruled on and if witnesses whose testimony would be material to the legality of the search are not willing to submit to personal interviews, then they would be subject to being deposed. The Court is concerned that perhaps the State for now will want to reserve its options, not commit itself one way or the other as to whether it intends to use any of the Texas evidence, and only make that decision at some time in the future. The problem with the latter possibility is that the Court and the Defendant have the right to know now rather than later whether the State intends to use the Texas evidence at trial. The Defendant is entitled to know that pursuant to Rule 15 and the Court is entitled to know that so that it can conduct orderly, timely hearings on pretrial motions well in advance of the trial date rather than trying to schedule depositions and an evidentiary hearing on the legality of an out-of-state search shortly before the trial because the State decided at the last minute that they wanted to use evidence which was probably known to or available to them for at least 6 months.

The Court is also aware from the Defendant's recently filed Reply to Response to Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property that, even if the State agrees that they will not offer in evidence in these cases anything seized in the Texas search, thus eliminating the need for an evidentiary hearing regarding the Texas search and thus eliminating the need for deposing the Texas witnesses, there may still be an issue as to whether any evidence which the State does intend to use at the trial in these

cases was directly or indirectly obtained only because of the Texas search. If so, then the Court would probably be back to square one, having to rule on the legality of the Texas search.

How this issue could be resolved prior to trial is puzzling to the Court. It would seem that some further hearing will be necessary unless the parties can agree that no evidence will be used that was seized in the Texas search, either being presented under the usual circumstances as testimony or exhibits or else being exploited to lead to other evidence which would be presented or even to particular lines of questioning that would not have otherwise been presented or pursued. Unless such an agreement can be reached, there will still be issues to be resolved. Unless the State concedes the illegality of the Texas search, as opposed to just agreeing that they will not use anything seized as a result of the search, the Court may still have to determine whether the Texas search was legal. If the defense is asserting that the State intends to use in any manner evidence which would not have been available to them but for the Texas search, then a hearing may be necessary to determine whether the State would in fact be using the fruits of the poisonous Texas search. How the latter determination would be made is difficult to fathom. The Court cannot imagine making the State put on their entire case against the Defendant and then making them demonstrate that every fact, document, theory, question or other aspect of their case was obtained independently of the Texas search. The Court certainly understands, however, the defense concern that there be some procedural mechanism in place to protect the Defendant from the possibility that, if the Texas search was illegal, nothing obtained in that search is used to convict him of the charges pending in this jurisdiction. The Court does not know whether the State has disclosed to the defense all that it has obtained from the Texas search and does

not express an opinion as to whether such disclosure would be sufficient to resolve the issue. The conclusion that the Court reaches from the above analysis is that it would not constitute a responsible management decision in trying to monitor these cases to decide that only issue regarding the Texas search is not yet ripe and can be tabled for resolution at some later date. If that issue has to be resolved, the issue of whether Texas witnesses should be deposed also has to be resolved.

IT IS ORDERED setting this matter for hearing on the Defendant's Motion to Depose Texas Law Enforcement Officials on Tuesday, October 28, 2008, at 10:30 a.m.

The Court will be willing at that hearing to discuss with the parties any other procedural issues that are raised in this Order.

cc:

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