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Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,	)	NO. CR-2007-743
	)	
Plaintiff,	)	RENEWED MOTION FOR
vs.	)	DEPOSITION OF STATE'S WITNESS
	)	REBECCA MUSSER OR, IN THE
	)	ALTERNATIVE, MOTION FOR
WARREN STEED JEFFS,	)	SANCTIONS FOR
	)	DISCLOSURE VIOLATIONS
	)	
	)	[Telephonic Oral Argument Requested]
Defendant.	)	[Hon. Steven F. Conn]
	)	

The defendant, Warren Jeffs, by and through his counsel undersigned,  
hereby respectfully requests this Court, pursuant to Rules 15.3 and 15.7 of the

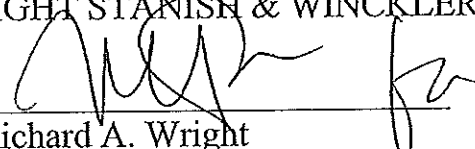


1 Arizona Rules of Criminal Procedure, to renew its order that State's witness  
2 Rebecca Musser submit to a deposition. The defendant further requests that the  
3 deposition be held in Tucson, Arizona at a date and time convenient to the State of  
4 Arizona and the defendant. In the alternative, the defendant respectfully requests  
5 this Court to issue its order precluding the State from calling Rebecca Musser as a  
6 witness and/or imposing whatever additional sanction the Court deems  
7 appropriate. This motion is based on the legal reasoning and authorities set forth in  
8 the attached Memorandum of Points and Authorities.  
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12 RESPECTFULLY SUBMITTED this 21st day of August, 2009.

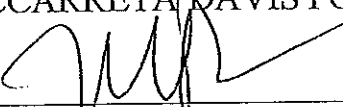
13 WRIGHT STANISH & WINCKLER

14 By

15   
16 Richard A. Wright  
17 Attorney for Warren Jeffs

13 PICCARRETA DAVIS PC

14 By

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16 Michael L. Piccarreta  
17 Jefferson Keenan  
18 Attorneys for Warren Jeffs

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I. STATEMENT OF FACTS

20 In its Order dated April 1, 2009, this Court ordered the deposition of State's  
21 witness Rebecca Musser to take place on April 30, 2009, at the offices of Wright,  
22 Stanish & Winckler in Las Vegas, Nevada. As the Court may recall, Rebecca  
23 Musser is listed as a witness for the State in the above-captioned matter. She was  
24 at one time married to Rulon Jeffs, the father of the defendant. She is a  
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26  
27 , an accuer in one of the proceedings. She testified in the state of Utah  
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1 about the same events involving the defendant and \_\_\_\_\_ that form the basis  
2 for the current charges. She is obviously a material witness regarding the offenses  
3 charged against the defendant. In addition, the State intends to have Ms. Musser  
4 testify, as an expert, about the practices and culture of the Fundamental Church of  
5 Jesus Christ of Latter Day Saints (FLDS) in both cases.  
6

7  
8 She is also a material witness regarding the search of the FLDS property in  
9 Texas, which is the subject of defendant's motion to suppress. Ms. Musser was  
10 present on the church property while the search was being conducted and as a  
11 witness to the execution of the search. Ms. Musser is also listed as informant in  
12 one of the Texas search warrant affidavits. Moreover, it is defendant's  
13 understanding that Ms. Musser was also provided a guided tour of the Yearning  
14 For Zion property, including sacred areas, in Texas by Schleicher County Sheriff  
15 David Doran.  
16  
17

18 Ms. Musser submitted to an interview on December 11, 2008, but refused to  
19 answer any questions having to do with any sort of connection to law enforcement  
20 officers and/or activities in the state of Texas. Texas law enforcement authorities  
21 ordered Ms. Musser not to provide any information about any law enforcement  
22 activities in the state of Texas including but not limited to the raid of the Yearning  
23 for Zion church property. Defendant then filed his motion for Ms. Musser's  
24 deposition and the State responded by indicating that Ms. Musser would be  
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1 available for another interview concerning the Texas matters. This Court then  
2 entered its order directing her to submit to a deposition as indicated above.  
3  
4 However, Ms. Musser failed to appear for her April 30, 2009, deposition,  
5 apparently citing some undocumented medical excuse. There has been a flurry of  
6 emails concerning Ms. Musser's refusal to comply with the Court's order since  
7 that time, despite all reasonable efforts by the parties to accommodate Ms. Musser  
8 and re-schedule her deposition.<sup>1</sup> The defendant would like to make it clear that he  
9 is not alleging any impropriety on the part of the State of Arizona. Rather, it  
10 appears that Ms. Musser has been playing games with both sides in her failure to  
11 cooperate with this Court's ordered deposition, as reflected in the emails.  
12  
13

14 In the latest episode in this saga, Ms. Musser is now requesting that all  
15 parties now travel to Austin, Texas for her deposition to take place on Monday,  
16 September 14, 2009, despite the fact that Ms. Musser currently resides in the state  
17 of Idaho. The defendant submits that Ms. Musser's unreasonable demands must  
18 come to an end. If Ms. Musser can make the trip to Austin, Texas, she can  
19 certainly make the shorter trip to Tucson, Arizona, a destination that is more  
20 convenient to the two actual parties in this matter, the State of Arizona and the  
21 defendant.  
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26 <sup>1</sup> The defendant has even agreed to allow authorities from the state of Texas to be present as  
27 long as they do not participate or interfere with Ms. Musser's deposition, as noted in the  
28 emails.

1 II. DISCUSSION

2 As noted above, Ms. Musser plays multiple roles in this case. She is a lay  
3 witness of complaining witness. However, she took no  
4 steps to prevent marriage to which lies at the heart of the  
5 charges against the defendant in that case. Ms. Musser is also purportedly an  
6 “expert” witness on all things FLDS. It is now evident that Ms. Musser was the  
7 confidential informant whose information was contained in a search warrant  
8 affidavit. Ms. Musser is also a disclosed informant who has provided information  
9 on multiple occasions to Schleicher County Sheriff David Doran in Texas. In  
10 addition, Ms. Musser was provided a guided tour of the Yearning For Zion church  
11 property in Texas, was present on the property while it was being searched, and is  
12 a witness to the execution of the search.

13 Rule 15 of the Arizona Rules of Criminal Procedure authorizes the court to  
14 order the deposition of any material witness who will not cooperate in granting a  
15 pre-trial personal interview and, as noted above, this Court ordered Ms. Musser’s  
16 deposition to take place in Las Vegas, Nevada on April 30, 2009. Ms. Musser has  
17 still not complied with the Court’s order, and now requests all the parties to travel  
18 to Austin, Texas for her deposition on September 14, 2009. The defendant submits  
19 that this latest request is unreasonable and, once again, renders Ms. Musser  
20 uncooperative for the purposes of Rule 15.3. *See Kirkendall v. Fisher*, 27 Ariz.

1 App. 210, 212, 553 P.2d 243, 245 (1976) [police officers' insistence on being  
2 interviewed as a group was an unreasonable condition and rendered them  
3 uncooperative within the meaning of the rule]; *State ex rel. Baumert v. Superior*  
4 *Court*, 133 Ariz. 371, 651 P.2d 1196 (1982) [police officer's refusal to submit to  
5 tape recorded interview rendered him uncooperative under the rule].  
6

7  
8 Accordingly, the defendant respectfully requests this Court to order Ms.  
9 Musser to submit to a deposition in Tucson, Arizona at a date and time convenient  
10 to the State of Arizona and the defendant.  
11

12 In the alternative, the defendant requests this Court to impose sanctions for  
13 Ms. Musser's repeated failure to comply with this Court's ordered deposition.  
14 Under Rule 15.7 of the Arizona Rules of Criminal Procedure, such sanctions may  
15 include precluding the calling of a witness, holding a witness in contempt, or any  
16 other sanction the court deems appropriate.  
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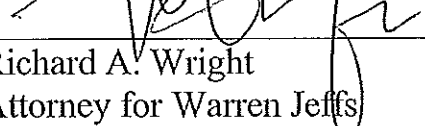
18 Ms. Musser's willful disobedience of this Court's order is obvious. She  
19 refused to answer questions during her interview without any valid reason. Ms.  
20 Musser has further failed to make arrangements to comply with this Court's  
21 ordered deposition, despite more than reasonable efforts by the parties to  
22 accommodate her in re-scheduling the deposition, as reflected by the emails.  
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25 Accordingly, for the foregoing reasons, the defendant, Warren Jeffs, by and  
26 through counsel undersigned, hereby respectfully requests this Court to order  
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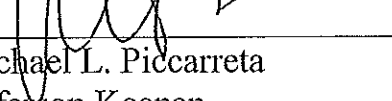
1 Rebecca Musser to submit to a deposition in Tucson, Arizona at a date and time  
2 convenient to the State of Arizona and the defendant. In the alternative, the  
3 defendant respectfully requests this Court to issue its order precluding the State  
4 from calling Rebecca Musser as a witness, issue its order holding her in contempt,  
5 or impose any other sanction the Court deems appropriate.  
6

7  
8 RESPECTFULLY SUBMITTED this 21st day of August, 2009.

9 WRIGHT STANISH & WINCKLER

10 By   
11 Richard A. Wright  
12 Attorney for Warren Jeffs

PICCARRETA DAVIS PC

10 By   
11 Michael L. Piccarreta  
12 Jefferson Keenan  
13 Attorneys for Warren Jeffs

14 Original of the foregoing mailed  
15 this 21st day of August, 2009, to:

16 Clerk of Mohave County Superior Court  
17 401 East Spring Street  
18 Kingman, AZ 86401

19 Hon. Steven F. Conn  
20 Mohave County Superior Court  
21 401 East Spring Street  
22 Kingman, AZ 86401


23 Copy of the foregoing emailed  
24 this 21st day of August, 2009, to:

25 Matthew J. Smith, Esq.  
26 Mohave County Attorney's Office  
27 315 North Fourth Street  
28 P.O. Box 7000  
Kingman, AZ 86402-7000

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CERTIFICATION OF COUNSEL

Undersigned counsel certifies that, after personal consultation and good faith efforts, counsel have been unable to satisfactorily resolve the issues concerning State's witness Rebecca Musser's failure to cooperate with this Court's order that she submit to a deposition in this matter.



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Michael L. Piccarreta