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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16
17 IN AND FOR THE COUNTY OF MOHAVE

18 STATE OF ARIZONA,) NO. CR-2007-743
19)
20 Plaintiff,) REPLY TO RESPONSE
21 vs.) RENEWED MOTION FOR
22) DEPOSITION OF STATE'S WITNESS
23 WARREN STEED JEFFS,) REBECCA MUSSER
24 Defendant.) [Telephonic Oral Argument Requested]
25) [Hon. Steven F. Conn]

26 The defendant, Warren Jeffs, by and through his counsel undersigned,
27 hereby replies to the State's response to his renewed motion for the deposition of
28 State's witness Rebecca Musser.



SCAN

1 The State is correct that Rebecca Musser was interviewed by defense
2 counsel on December 11, 2008. However, the State neglects to point out that it
3 was Ms. Musser's unjustified refusal to answer questions in key areas to the
4 defense that led to the motion to depose Ms. Musser which was filed on January
5 29, 2009, and which resulted in this Court's initial order that she be deposed in
6 order to answer those questions in Las Vegas, Nevada. Since the time of the
7 Court's order, April 1, 2009, Ms. Musser has not cooperated in scheduling her
8 deposition, despite more than reasonable efforts on the part of defense counsel and
9 counsel for the State to accommodate her. Indeed, her only response came last
10 week when she insisted that she now wants to be deposed in Austin, Texas, no
11 doubt at the request of Texas law enforcement authorities as their lawyers reside in
12 Austin.

13 It must be remembered that authorities from the state of Texas caused all of
14 these problems to begin with through their voluntary decision to provide evidence
15 from the Texas searches to officials in the state of Arizona who were in the midst
16 of prosecuting Mr. Jeffs, when the Texas officials were under no obligation to do
17 so, and when the defendant had specifically advised officials from the state of
18 Arizona of the serious potential problems that any such exposure would generate.
19 Texas law enforcement authorities then compounded these problems when they
20 instructed Ms. Musser not to answer relevant questions relating to the defense,
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1 thus necessitating the motion to depose Ms. Musser. It does not take a genius to
2 figure out that the idea of holding Ms. Musser's in Austin, Texas, presumably did
3 not originate with her. This is part of the difficulty when you have a listed witness
4 who is also an informant for law enforcement in another state. Given the
5 machinations of the Texas authorities thus far, the defendant submits that the
6 Court should not be inclined to do them any favors by ordering Ms. Musser's
7 deposition to take place at their convenience.
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10 The defendant disputes the State's contention that "Becky is cooperative."
11 [Response, p. 4]. Defense counsel has made numerous requests over the summer
12 for Ms. Musser to name a date and time at which she would comply with this
13 Court's ordered deposition even telephonically if Texas law enforcement was not
14 physically present in the room while all other counsel were on the telephone.
15 Although it is true that undersigned counsel Michael Piccarreta was spending most
16 of the summer months in Oregon, during that period of time he was trying to
17 arrange for either the telephonic deposition of Ms. Musser or for travel to Boise,
18 Idaho, specifically to accommodate Ms. Musser so that she would not have to
19 travel at all.¹ Indeed, even while in Oregon, counsel works daily on his cases and
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25 ¹ For example, in an email dated Tuesday, June 16, 2009, undersigned counsel advised the
26 State: "In regards to Becky Musser, if we are going to do it telephonically, I can do it any
27 time after your return from vacation. If we are doing it face to face, I can be available the
28 week of July 13 or any time after August 17. Rick [Wright] is available July 26 through
August 8."

1 returns to Arizona for a week each month. Yet Ms. Musser refused to provide the
2 parties with a firm date for her deposition. Apparently, Ms. Musser acquiesced to
3 the Texas law enforcement authorities that they be present in person for her
4 deposition. It is now the presence of Texas law enforcement officials that requires
5 Ms. Musser, counsel for the defendant, and counsel for the State to travel, despite
6 the fact that the State of Texas is not a party to these proceedings. Defense
7 counsel submits that all of the above facts show that Ms. Musser has not been
8 cooperative and her request to be deposed in Austin, Texas, at the request of the
9 Texas authorities, is simply unreasonable and renders her uncooperative within the
10 meaning of Rule 15.3 of the Arizona Rules of Criminal Procedure.
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14 Ms. Musser is listed as a State witness. In addition, she is both a
15 confidential informant and disclosed informant for Texas officials and those
16 matters relate directly to her credibility as a witness listed by the State and,
17 especially, with regard to any purported "expert" testimony about the
18 Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS). At the
19 urging of officials from the state of Texas, Ms. Musser unjustifiably refused to
20 answer relevant questions and now insists on being deposed in Austin, Texas,
21 some 1,200 miles from the courthouse in which these proceedings are taking
22 place.
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26 Accordingly, the defendant once again requests this Court to order Ms.
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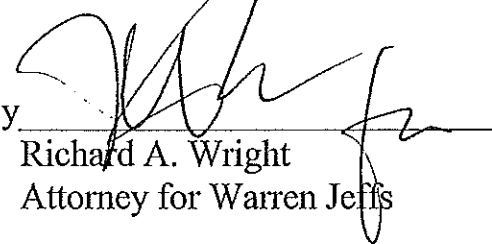
1 Musser to be deposed in Tucson, Arizona. Defense counsel would also be
2 amenable to having Ms. Musser's deposition take place in Las Vegas, Nevada,
3 which is convenient to one counsel for Mr. Jeffs and counsel for the State of
4 Arizona or, as a last alternative, in Kingman, Arizona. The defendant submits that
5 it is not reasonable for all the parties to travel to Austin, Texas, simply because
6 officials from the state of Texas, which is not a party to this action, find it more
7 convenient for them. Especially so when this entire problem is Ms. Musser's and
8 Texas' creation as she refused to answer relevant questions at her interview when
9 all Arizona counsel were present thus necessitating an additional interview or
10 deposition. Had she not done so, the interview process for her would be over and
11 we would not be dealing with this issue. In the alternative, if the Court is inclined
12 to order Ms. Musser's deposition to take place in Austin, Texas, the defendant
13 submits that the Court should also order the State of Arizona to reimburse the
14 expenses incurred by defense counsel (travel and room and board) in complying
15 with the conditions the State's witness has placed upon her deposition. Finally, if
16 she does not comply with any court order, she should be precluded as a State's
17 witness.
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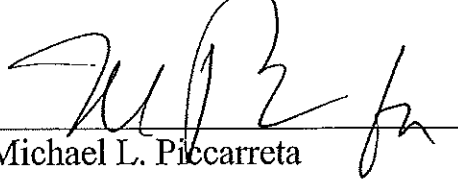
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RESPECTFULLY SUBMITTED this 26th day of August, 2009.

WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

By 
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Attorney for Warren Jeffs

By 
Michael L. Piccarreta
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Original of the foregoing mailed
this 26th day of August, 2009, to:

Clerk of Mohave County Superior Court
401 East Spring Street
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Hon. Steven F. Conn
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Copy of the foregoing emailed
this 26th day of August, 2009, to:

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