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-and-

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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,)	DEFENDANT JEFFS' MOTION
)	TO DISMISS COUNTS 2 & 4
vs.)	
)	
WARREN STEED JEFFS,)	[Oral Argument Requested]
)	
Defendant)	[Hon. Steven F. Conn]
_____)		

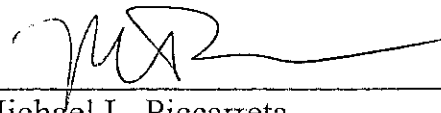
The defendant, Warren Jeffs, by and through his undersigned attorney, hereby respectfully requests this Court, pursuant to Rule 16 6(b) of the Arizona Rules of Criminal Procedure, to issue its order dismissing counts 2 and 4 of his indictment. These counts are legally insufficient as a matter of law for the reasons set forth in the attached Memorandum of Points and Authorities.

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1 RESPECTFULLY SUBMITTED this 26th day of March, 2008.

2 WRIGHT STANISH & WINCKLER PICCARRETA DAVIS PC

3
4 By 
5 Richard A. Wright
6 Attorney for Warren Jeffs

7 By 
8 Michael L. Piccarreta
9 Jefferson Keenan
10 Attorneys for Warren Jeffs

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 I. STATEMENT OF FACTS

13 The defendant, Warren Jeffs, stands charged as an accomplice to the crimes
14 of sexual conduct with a minor and incest. Count 1 arises from an incident that,
15 according to the indictment, occurred on or between May 1, 2002, and June 30,
16 2002, wherein Allen Steed had sexual conduct with _____ who was under
17 18 years of age. Count 2 arises from the very same incident and alleges that the
18 sexual conduct constituted incest. Count 3 of the indictment refers to an incident
19 that allegedly occurred on or between August 15, 2002, and September 15, 2002,
20 between Mr. Steed and _____. Count 4 arises from this same incident and also
21 alleges that the sexual conduct constituted incest. Mr. Jeffs is not charged with
22 personally engaging in any type of sexual conduct with anyone, rather he is
23 charged as an accomplice to the allegedly illegal sexual activity between these
24 other individuals.

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26 The incest charges in counts 2 and 4 therefore constitute a second set of
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1 charges for the same activity addressed in counts 1 and 3. The incest charges must
2 be dismissed because Arizona law clearly requires that both participants be “18 or
3 more years of age.” In addition, because Mr. Steed and [redacted] are first cousins
4 of the half blood, they are not within the degrees of consanguinity that are defined
5 as incestuous under Arizona law. Accordingly, counts 2 and 4 of the indictment
6 must be dismissed, leaving Mr. Jeffs to stand trial as an accomplice to the charges
7 of sexual conduct with a minor set forth in counts 1 and 3.
8

10 II DISCUSSION

11 A. Arizona’s Incest Statute, A.R.S. § 13-3608, Clearly Requires That 12 Both Participants Be 18 Or More Years Of Age

13 Rule 16.6(b) of the Arizona Rules of Criminal Procedure provides that:
14

15 The court, on motion of the defendant, shall order that a prosecution
16 be dismissed upon finding that the indictment, information, or
17 complaint is insufficient as a matter of law

18 Count 2 of the indictment alleges that:

19 On or between May 1, 2002, and June 30, 2002, in the vicinity of a
20 trailer in Colorado City, Mohave County, Arizona, said Defendant,
21 WARREN STEED JEFFS, committed the crime of incest as an
22 accomplice, all in violation of A.R.S. §§ 13-3608, 13-303, 13-701
and 13-801, a Class 4 Felony.

23 Count 4 of the indictment is worded identically, except that the date of the offense
24 is listed as “[o]n or between August 15, 2002, and September 15, 2002.” The
25 crime of incest is set forth in A.R.S. § 13-3608 which states:
26

27 Persons who are 18 or more years of age and are within the degrees
28

1 of consanguinity within which marriages are declared by law to be
2 incestuous and void, who knowingly intermarry with each other, or
3 who knowingly commit fornication or adultery with each other are
4 guilty of a class 4 felony.

5 [Emphasis added].

6 By its own terms, the statute only applies to “persons who are 18 years or
7 more of age. . . who knowingly commit fornication. . . with each other . . .” The
8 indictment, therefore, fails to allege an essential element of the offense, i.e. that
9 both persons are 18 or more years of age. The statute appears to have had its
10 origin in the Arizona Penal Code of 1901 and originally had no age
11 requirement. According to the Historical and Statutory Notes, “[t]he 1985
12 amendment made the section applicable to persons who are 15 or more years of
13 age.” Laws 1985, Ch 364, § 29, effective May 16, 1985. In 1998, the age was
14 changed from 15 to 18 or more years of age. Laws 1998, Ch. 291, § 1.

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16
17
18 The Revised Arizona Jury Instruction for this offense has not been
19 updated to reflect the 1998 amendment. It refers to the 1985 version of the
20 statute and states:

21
22 **Incest.**

23 The crime of incest requires proof of the following two things:

- 24
25 1. The defendant knowingly [married][committed sexual
26 intercourse with][committed adultery with] another; *and*
27 2. The defendant and such other person were 15 or more
28 years of age and were [parent and child][grandparent and

1 grandchild, regardless of the degree][brother and sister, including
2 half-brother or half-sister][uncle and niece][aunt and nephew][first
3 cousins] at the time.

4 Revised Arizona Jury Instructions, Criminal 36.08.

5 Under this jury instruction, it is clear that both the defendant and the
6 other person must be 15 or more years of age. Accordingly, with the 1998
7 revision to the statute, it follows that both the defendant and other person must
8 be 18 or more years of age.¹ _____ is referred to in the indictment as “under
9 18 years of age.” Accordingly, the charges of incest as alleged in counts 2 and
10 4 of the indictment are “insufficient as a matter of law,” and must be dismissed
11 pursuant to Rule 16.6(b) of the Arizona Rules of Criminal Procedure.
12

13
14 B. Mr Steed And(_____, Are Not Within The Degrees Of
15 Consanguinity Within Which Marriages Are Declared By
16 Law To Be Incestuous And Their Conduct Cannot Therefore
17 Be The Basis For A Charge Of Incest.

18 As noted above, Arizona’s incest statute applies to individuals 18 or more
19 years of age who are “within the degrees of consanguinity within which
20 marriages are declared by law to be incestuous and void...” A.R.S. § 13-3608

21 The marriages that are declared incestuous and void under Arizona law are set
22

23 _____
24 ¹ Arizona case law shows that cases of incest involving minors are prosecuted under the
25 Arizona statutes that prohibit certain types of sexual activity with minors. See, e.g., *State v.*
26 *Arnoldi*, 176 Ariz. 236, 860 P.2d 503 (App. 1993) [charges involved defendant’s four minor
27 daughters]. As noted above, Mr. Jeffs also stands charged as an accomplice to two counts of
28 sexual conduct with a minor based on the same incidents that form the basis for the incest
counts

1 forth in A.R.S. § 25-101 which provides, in pertinent part:

2 Marriage between parents and children, including grandparents and
3 grandchildren of every degree, between brothers and sisters of the
4 one-half as well as the whole blood, and between uncles and
5 nieces, aunts and nephews and between first cousins, is prohibited
6 and void.

7 A.R.S. § 25-101(A) Significantly, while statute specifically prohibits
8 marriages between brothers and sisters “of the one-half as well as the whole
9 blood,” it makes no such reference to first cousins of the half blood. Clearly,
10 the Arizona legislature knows how to refer to relationships of the half blood
11 when it so chooses. The fact that it has done so with respect to brothers and
12 sisters but not first cousins indicates that there is no prohibition against
13 marriages between first cousins of the half blood. Under the doctrine of
14 *expressio unius est exclusio alterius*, it is plain that the Arizona legislature did
15 not intend A.R.S. § 25-101(A) to apply to first cousins of the half-blood. *See*
16 *State v. Roscoe*, 185 Ariz. 68, 71-72, 912 P.2d 1297, 1300-01 (1996).

17 Mr. Steed and _____ share a common grandfather, Newell Steed, but
18 they do not share a common grandmother.² They are therefore not first cousins,
19 but rather first cousins of the one-half blood. Accordingly, the relationship
20 between Mr. Steed and _____ is not defined as incestuous under Arizona’s
21 marriage statutes and A.R.S. § 13-3608 cannot be applied to them. Counts 2
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27 ² _____ grandmother is Alice Young and Mr. Steed’s grandmother is Eliza Pugh.
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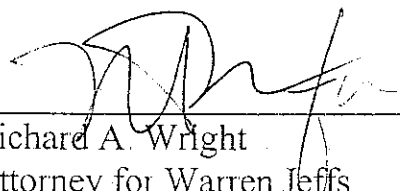
1 and 4 of the indictment are therefore also insufficient as a matter of law on this
2 ground and the counts must be dismissed pursuant to Rule 16.6(b) of the
3 Arizona Rules of Criminal Procedure.
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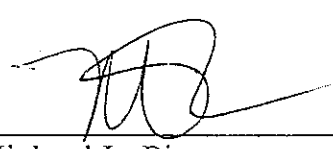
5 III. CONCLUSION

6 For the foregoing reasons, the defendant, Warren Jeffs, by and through
7 his undersigned attorney, hereby respectfully requests this Court to issue its
8 order dismissing counts 2 and 4 of his indictment.
9

10 RESPECTFULLY SUBMITTED this 26th day of March, 2008.

11
12 WRIGHT STANISH & WINCKLER PICCARRETA DAVIS PC

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14 By 
15 Richard A. Wright
16 Attorney for Warren Jeffs

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18 By 
19 Michael L. Piccarreta
20 Jefferson Keenan
21 Attorneys for Warren Jeffs
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1 Copy of the foregoing mailed
2 this 26th day of March, 2008, to:

3 Clerk of Mohave County Superior Court
4 401 East Spring Street
5 Kingman, AZ 86401

6 Copy of the foregoing faxed and mailed
7 this 26th day of March, 2008, to:

8 Hon. Steven F. Conn
9 Mohave County Superior Court
10 401 East Spring Street
11 Kingman, AZ 86401
12 Fax: 928-753-8938

13 Copy of the foregoing mailed
14 this 26th day of March, 2008, to:

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