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Attorney for Defendant

FILED
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VIRLYNN TINNELL
SUPERIOR COURT CLERK

REDACTED

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

STATE OF ARIZONA,)	NO. CR-2007-953
)	
)	REPLY TO RESPONSE
Plaintiff,)	TO MOTION TO DEPOSE
)	TEXAS LAW
vs.)	ENFORCEMENT OFFICIALS
)	
WARREN STEED JEFFS,)	
)	
Defendant.)	[Hon. Steven F. Conn]
)	

The defendant, Warren Jeffs, by and through his counsel undersigned, hereby replies to the State's response to his motion to depose Texas law enforcement officials. The State's response contends that, because the State avows that "at the present time we do not plan on using any of the evidence seized from Texas," [Response, p 1], the motion to depose the Texas law enforcement

1 officials should be denied. The State is in error

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3 It should be noted that undersigned counsel specifically advised the State of
4 Arizona of the potential problems concerning the Texas raids and the possible
5 tainting of the Arizona proceedings due to the fact that Arizona law enforcement
6 officials have cooperated with the Texas authorities and have received and
7 reviewed items obtained in the Texas raids. [Correspondence to Matthew J.
8 Smith, Esq., April 11, 2008, attached hereto]. The State's initial response seemed
9 to indicate that the Texas raids would have no bearing upon the Arizona
10 prosecutions. However, as noted in the State's response to defendant's motion to
11 suppress, the State has, in fact, disclosed to the defendant in the present case items
12 seized in the Texas raids. When the defendant filed his motion to suppress
13 evidence illegally obtained in the search of the FLDS property, the State changed
14 its tune again and responded: "While the state did disclose two marriage
15 certificates from the YFZ Ranch to the defense, the state does not need these
16 documents in the present cases and will not use these documents in the present
17 cases." [Response to Motion to Suppress, p. 4]. Given these circumstances, the
18 defendant submits that it would certainly promote judicial efficiency to simply
19 order the depositions to take place as requested.
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25 The defendant has set forth some of his concerns regarding the role played
26 by, and information possessed by, Texas law enforcement officials in his reply to
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1 the State's response to his motion to suppress evidence illegally obtained in the
2 search of the FLDS property, incorporated herein by reference. The defendant has
3 also received this Court's ruling dated October 23, 2008. The Court is correct that
4 the State has not categorically announced that it will never use any of the evidence
5 obtained from the Texas raids. The State has not announced that it will not use
6 any such evidence in its questioning or cross examination of witnesses. The State
7 has not announced that it will not use any such evidence as investigative leads or
8 for other strategic purposes. Under these circumstances, the Court is correct to be
9 concerned about the State wanting to reserve its options and not definitively
10 commit as to the possible future use of evidence seized in the Texas raids. [Court
11 Notice/Order/Ruling, October 23, 2008, p. 2].

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16 The defendant certainly does not want to be put in the position of
17 conducting "eleventh hour" interviews in connection with "eleventh hour"
18 hearings at some later point in these proceedings should the State opt to use
19 evidence from raids, after all.¹ Defendant therefore submits that the most prudent
20 course of action that would promote "orderly timely hearings on pretrial motions
21 well in advance of the trial date," [Court Notice/Order/Ruling, October 23, 2008,
22 p. 2], would be to order the depositions to take place now. It is not expected that
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¹ For example, the State may determine that, during the course of the trial, its case is going badly and it suddenly needs to use a certain piece of evidence seized in the Texas raids.

1 any of the requested depositions of the three Texas law enforcement officials
2 would exceed two hours, and there would be no real inconvenience to those
3 officials as undersigned counsel has already indicated to the State his willingness
4 to travel to Texas to conduct the depositions.
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6 The defendant believes that such a procedure would not only facilitate the
7 orderly progression of the Arizona proceedings, but also that information derived
8 from the depositions, themselves, would assist the Court in resolving the issues
9 raised in the Court's Notice/Order/Ruling concerning the necessity for the Court to
10 address the possible indirect use of evidence illegally obtained in the state of
11 Texas. As things now stand, there is certainly the potential for the use of the
12 illegally obtained materials at trial, in questioning or cross examination of
13 witnesses at trial, and as investigative leads or for other derivative or collateral
14 purposes.
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19 However, apart from these concerns, the defendant submits that the Texas
20 law enforcement officials are independently subject to deposition under Rule 15.3
21 of the Arizona Rules of Criminal Procedure. Even if this Court accepts the State's
22 avowal that it will not use any evidence obtained in the Texas raids, the Texas law
23 enforcement officials nevertheless possess abundant material information about
24 Mr. Jeffs, the FLDS, the participants involved in the alleged activity that forms the
25 basis for the charges in the Arizona cases, and numerous individuals who have
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1 been or will be listed as witnesses in the Arizona cases.

2 Specifically, Texas law enforcement officials have spent days going
3 through FLDS property, including the personal property and effects of Mr. Jeffs,
4 and have acquired material information pertaining to the present charges against
5 Mr. Jeffs in Arizona. These officials have also made public statements about Mr.
6 Jeffs and the FLDS. The Texas law enforcement officials have also had contact
7 with, and/or acquired information from and about, numerous individuals involved
8 in the prosecutions of Mr. Jeffs in Arizona including, but not limited to, Assistant
9 Arizona Attorney General Timothy Linnins, Mohave County Investigator Gary
10 Engels, Private Investigator Sam Brower, _____,
11 _____, The Diversity Foundation and its attorney Roger Hoole. While it is not
12 known for certain whether Texas law enforcement officials had met with and
13 interviewed all of these individuals, it is believed that they have had contact with
14 and communications about many, if not all, of them. It is quite clear that
15 Schleicher County Sheriff David Doran, Deputy County Sheriff John Connor, and
16 Texas Ranger Brooks Long have material information which extends well beyond
17 their role in simply obtaining evidence that the State contends it does not intend to
18 use for the time being. All of this information is "material to the case" for the
19 purposes of a court ordered deposition under Rule 15.3 of the Arizona Rules of
20 Criminal Procedure.
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1 As noted in defendant Jeffs' Reply to the State's Response to his Motion to
2 Suppress Evidence Illegally Obtained in the Search of FLDS Property, there has
3 clearly been an over-arching, coordinated effort between these Texas law
4 enforcement officials and Arizona authorities, among others, to acquire and
5 exchange information relating to the current prosecutions of Mr. Jeffs by the State
6 of Arizona. Assistant Attorney General Timothy Linnins and Mohave County
7 Investigator Gary Engels have literally spent days in Texas with items seized
8 illegally from the FLDS property (including the defendant's personal property and
9 effects) and have obtained and reviewed literally thousands of illegally seized
10 documents and other items. The State has just disclosed an "FLDS Evidence
11 Inventory" of items received and reviewed by the State of Arizona from the Texas
12 raids. The inventory, itself, comprises 23 pages and references thousands of
13 documents and other items. The defendant submits that these law enforcement
14 agencies cannot cooperate to such a vast extent to promote prosecution purposes,
15 and then do a "Texas two step" to deny relevant disclosure to the defendant. If the
16 Texas law enforcement officials have nothing to hide, they should have no
17 objection to being interviewed or deposed in the above-captioned matter.
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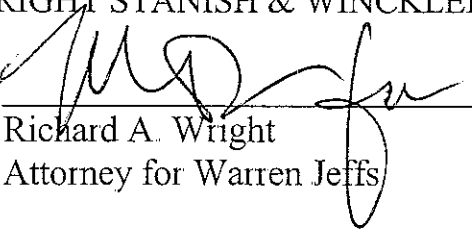
24 Finally, it must be noted that a defendant's right to depose a witness who
25 will not cooperate an interview is not limited to members of the "prosecution
26 team," although the Texas law enforcement officials are clearly de facto members
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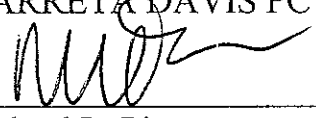
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of such a prosecution team. Rather, Rule 15.3 requires only that a “party shows that the person’s testimony is material to the case or necessary adequately to prepare a defense or investigate the offense...and that the person will not cooperate in granting a personal interview.” Rule 15.3(a)(2), Arizona Rules of Criminal Procedure. The Texas law enforcement officials certainly fit this criteria.

For the foregoing reasons, the State’s opposition to the motion to depose the Texas law enforcement officials is without merit, and this Court should order their depositions pursuant to Rule 15.3 of the Arizona Rules of Criminal Procedure.

RESPECTFULLY SUBMITTED this 24th day of October, 2008.

WRIGHT STANISH & WINCKLER
By 
Richard A. Wright
Attorney for Warren Jeffs

PICCARRETA DAVIS PC
By 
Michael L. Piccarreta
Jefferson Keenan
Attorneys for Warren Jeffs

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Copy of the foregoing mailed
this 24th day of October, 2008, to:

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

Copy of the foregoing faxed and mailed
this 24th day of October, 2008, to:

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

Copy of the foregoing emailed and
mailed this 24th day of October, 2008, to:

Matthew J. Smith, Esq.
Mohave County Attorney's Office
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April 11, 2008

**VIA EMAIL: matt.smith@co.mohave.az.us
AND U.S. MAIL**

Matthew J. Smith, Esq.
Mohave County Attorney
315 North Fourth Street
P.O. Box 7000
Kingman, AZ 86402-7000

Re: State v. Warren Jeffs
Nos: CR-2007-743 and CR-2007-953

Dear Matt:

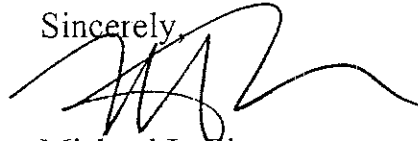
It is appearing possible that the phone call which triggered the massive search of an entire community in Texas was a ruse. It also appears that issues may be raised as to whether the Texas authorities knowingly or intentionally withheld information from the court, engaged in a general warrant, committed numerous *Franks* violations, and other illegalities during the search in Texas. Some of the individuals involved in that search may be subjected to civil liability, if not potential criminal liability, if civil rights violations are uncovered. I recognize your initial reaction is "that's not my problem." The reason I am advising you of this is twofold:

1. I would request information whether any representatives of the plaintiff, the State of Arizona, or Mohave County were involved in providing information or in any manner whatsoever with the authorities in Texas involved in the search. I have no information that they were, but I am just making this inquiry so we can make a determination as to what, if any, effect it has on the current pending Arizona cases.

PICCARRETA DAVIS PC

2. Secondly, I wanted to advise you of potential problems with the search and seizure as if there is any information provided from Texas or federal authorities involved in the search and seizure to you or other representatives of the state or county, then we may need to hold hearings regarding the lawfulness of the search and any taint or information arising from the search on the current Arizona case. I wanted to advise you of this problem so that you are aware of it and the potential implications arising out of being the recipient of information arising out of any illegal or unconstitutional behavior in Texas. It may be your position is "what happens in Texas, stays in Texas," so it does not cause any problems in our case, but I thought, in an abundance of caution, I should make a determination to see whether there is any involvement of Arizona or any current involvement by the State of Arizona in that matter or any plans to be the recipient of information arising out of the situation in Texas and whether any of that information has tainted the Arizona cases.

Sincerely,

A handwritten signature in black ink, appearing to read 'MLP', with a long horizontal flourish extending to the right.

Michael L. Piccarreta

MLP:bp

cc: Richard Wright, Esq.