

1 April 30, that no deposition would take place. The State feels compelled to point out
2 that Becky was interviewed at great length by defense counsel in this case on
3 December 11, 2008, in Salt Lake City, Utah. The State and the defense team of
4 lawyers conducted a number of interviews in Salt Lake City during the week of
5 December 11. The interview of Becky Musser started on December 11, at 9:00 a.m.,
6 and was concluded at 11:30 a.m. During the two and a half hour interview Becky
7 Musser cooperated and answered every question asked by the defense except for
8 questions concerning her involvement with the Texas authorities. The State has
9 indicated on multiple occasions and would again reiterate that it would stipulate to not
10 using any evidence from Texas in any manner whatsoever in the two pending cause
11 numbers before this Court. Furthermore, Becky's refusal to answer questions
12 concerning Texas were at the request and order of the Texas Attorney General's Office.
13 They instructed her not to answer any questions concerning her involvement with Texas
14 based on their understanding of applicable grand jury law.

15 At the conclusion of Becky's two and a half hour interview, Mr. Piccarreta and
16 Becky Musser discussed where any follow-up interview would take place. Mr.
17 Piccarreta indicated he would probably file a motion to compel Becky to answer the
18 questions involving Texas. The discussion was left with the subject of the State of
19 Idaho, Becky's home State, as being a potential place for the interview. No agreement
20 was reached at that time. A lot of discussion took place between the State and
21 defense counsel concerning the April 30th date for Becky Musser's deposition or
22 interview. Becky had back surgery and was unable to attend the interview. Defense
23 agreed to give her some more time concerning that interview. Although Becky was
24 unable to appear on the April 30th date, she has continued to express her willingness to
25 continue the interview at a future date and time. Although the State would concede that

1 it has been difficult to get in touch with Becky since the time of her surgery; the defense
2 would also have to concede that a partial reason that the interview did not take place
3 over the summer months is the fact that defense counsel spends most of his summer in
4 the State of Oregon. The State would like to make it clear that it is not alleging any fault
5 on the part of defense counsel; the State is merely pointing out that not much happened
6 in this case in terms of interviews over the summer due to defense counsel spending
7 the majority of his summer in Oregon. The point the State is making is that even though
8 we were trying to set up this interview in April or May once the summer rolled around
9 the sense of urgency was lost on both sides for some period of time.


10 Becky Musser would like to complete her interview in the State of Texas due to
11 the fact that Texas is a real party-in-interest with respect to the matters defense counsel
12 wants to question her about. The defense has already completed its' interview
13 concerning her involvement in the Arizona case; now the defense wants to talk to her
14 about her involvement in the Texas law enforcement search of the YFZ Ranch and her
15 involvement with the Texas search warrant affidavits. Texas has a vested interest in
16 these matters as there is continuing litigation going on concerning the legality of the
17 Texas search of the YFZ Ranch. Becky Musser wants Texas to be present so that they
18 can hear what she has to say and also instruct her if any of the proffered questions
19 violates Texas law. The State is not planning on introducing any evidence from the YFZ
20 Ranch or the search and would stipulate to same at this time. Based on the above, it is
21 not unreasonable that Becky would like to do this interview in the State of Texas where
22 defense counsel has previously traveled to do interviews in this case. This would
23 enable Texas to be present while at the same time giving the defense their opportunity
24 to complete their interview. Defense counsel has previously asserted that he would
25 complete the interview on the Texas matters with Becky Musser over the telephone;

1 however, the defense's position is that if Texas is going to be present in person, then
2 defense counsel wants to also be present in person to complete this interview.

3 II. DISCUSSION

4 The State is in agreement with the defense that this interview needs to be
5 completed as soon as possible. The State is attempting to negotiate between a number
6 of parties in order to finish this process. The State has to take into account Becky's
7 schedule and the fact that she believes that Texas needs to be present during her
8 interview. Texas would like to be present during the completion of Becky's interview.
9 Defense counsel live in both Las Vegas, Nevada, and Tucson, Arizona. Becky Musser
10 lives in the State of Idaho. Everyone has a different idea of what is reasonable and
11 where the interview should take place. The State is attempting to work out these
12 matters as this time to everybody's satisfaction. The State believes it is premature to
13 order a deposition when Becky is cooperative, previously submitted to a two and a half
14 hour interview, is being questioned about matters the State does not intend on using in
15 any way at trial, and has agreed to still allow the defense to finish the pre-trial interview
16 process. The State understands defense counsel's frustration but does not believe that
17 Becky's request to complete the interview in Austin, Texas, to be an unreasonable one
18 under Rule 15.3 of the Arizona Rules of Criminal Procedure. The cases cited by
19 defense counsel are not on point concerning the issue of what is an unreasonable
20 condition being imposed by a witness with respect to the Rule 15 interview process.

21 RESPECTFULLY SUBMITTED this 25th day of AUGUST, 2009.

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23 
24 MATTHEW J. SMITH
25 COUNTY ATTORNEY

1 A copy of the foregoing
sent this same day to:

2 HONORABLE STEVEN F. CONN
3 SUPERIOR COURT JUDGE

4 MICHAEL L. PICCARRETA
ATTORNEY FOR DEFENDANT

5 RICHARD A. WRIGHT
6 ATTORNEY FOR DEFENDANT

7 By Ben Brooks

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