

ps6

REDACTED ORIGINAL FILED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PICCARRETA DAVIS PC  
145 South Sixth Avenue  
Tucson, AZ 85701-2007  
(520) 622-6900  
Michael L. Piccarreta  
State Bar No. 003962  
Email: [mlp@pd-law.com](mailto:mlp@pd-law.com)  
Jefferson Keenan  
State Bar No. 013896  
Email: [jkeenan@pd-law.com](mailto:jkeenan@pd-law.com)  
Attorneys for Defendant

2009 NOV 23 PM 5:19

MIRLYNN TINNELL  
SUPERIOR COURT CLERK

-and-

WRIGHT STANISH & WINCKLER  
300 S. Fourth Street, Suite 701  
Las Vegas, NV 89101  
(702) 382-4004  
Richard A. Wright  
Email: [rick@wswlawlv.com](mailto:rick@wswlawlv.com)  
Nevada Bar No. 000886  
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,	)	MOTION FOR DISCLOSURE OF
vs.	)	IMPEACHMENT MATERIAL
	)	CONCERNING
	)	COMPLAINING WITNESS
WARREN STEED JEFFS,	)	
	)	[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 Rule 15.1 of the Arizona Rules of Criminal Procedure, to issue its order directing the State to disclose

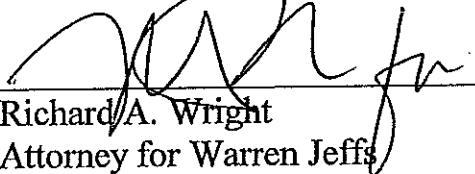


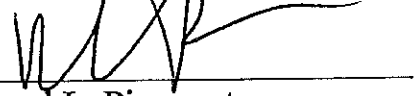
1 impeachment material concerning its complaining witness, This  
2 material is discoverable under Rule 15.1 of the Arizona Rules of Criminal  
3 Procedure and the principles set forth in *Brady v. Maryland*, 373 U.S. 83 (1963).  
4 This request is based on the legal reasoning and authorities set forth in the  
5 attached Memorandum of Points and Authorities.  
6

7  
8 RESPECTFULLY SUBMITTED this 20th day of November, 2009.

9 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

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

By   
13 Michael L. Piccarreta  
14 Jefferson Keenan  
15 Attorneys for Warren Jeffs

16  
17  
18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I. STATEMENT OF FACTS

20 The defendant, Warren Jeffs, has requested the State to turn over  
21 impeachment material relating to the credibility of complaining witness

22 In addition to a request for specific categories of *Brady* material  
23 including any and all benefits from any law enforcement or governmental  
24 agency,<sup>1</sup> counsel for the defendant also specifically requested information  
25 concerning the benefits<sup>1</sup> has received for telling her story about her

26  
27  
28  
<sup>1</sup> Correspondence to Mohave County Attorney Matthew J. Smith, March 12, 2008, March 21, 2008.

1 interactions with the defendant. On information and belief, it appears that  
2 has received a considerable sum of money in connection with the  
3 publication of the book *Stolen Innocence: My Story of Growing Up In a*  
4 *Polygamist Sect, Becoming a Teenage Bride, and Breaking Free of Warren*  
5 *Jeffs*. Specifically, counsel for the defendant submitted the following request:  
6

7  
8 It is my understanding that is publishing a book  
9 regarding her experiences with the Fundamentalist Church of  
10 Latter Day Saints (FLDS) and/or Mr. Warren Jeffs. Accordingly, I  
11 am requesting copies of book contract, any drafts of  
12 the manuscript of the proposed book,<sup>2</sup> and any other financial  
13 benefits she has received, will receive, expects to receive, or may  
14 receive as a result of her relationship with the FLDS and/or the  
15 trials of Mr. Warren Jeffs in the states of Arizona and Utah. I  
16 further request the disclosure of any other financial benefits

has received from any source, including but not limited to,  
any expense paid trips to appear on television or radio, including  
transportation expenses, food, lodging, local transportation, and  
any other expenses associated with any such trips.

17 [Correspondence to Mohave County Attorney Matthew J. Smith, March 5,  
18 2008].

19  
20 The defendant did not receive the requested materials. It appears that the  
21 State forwarded the defendant's requests to attorney, Roger Hoole,  
22 who, in turn, deflected the requests to the publisher of the book, Harper  
23 Collins. Counsel for the defendant then renewed his request to the State:  
24

25 Mr. Hoole did not provide any of the financial benefits that,

26  
27 <sup>2</sup> The request for manuscript was made prior to the publication of the book and the book's  
28 publication has rendered this request moot.

1 is receiving as a result of her book by attempting to pass the  
2 buck to the New York publisher. I again request all financial  
3 benefits has received as a result of her book. It is not  
4 my job nor your job to run around the country to try and obtain  
5 this information. If Mr. Hoole and I refuse to cooperate  
6 with you regarding her benefits which are clearly discoverable and  
7 disclosable, then the choice is theirs. However, you should advise  
8 them that the remedy may be preclusion of her testimony. If she  
9 intends to financially benefit as a result of her relationship with  
10 Mr. Jeffs and the FLDS, then those benefits must be disclosed and  
11 are admissible for impeachment purposes.

12 [Correspondence to Mohave County Attorney Matthew J. Smith, August 15,  
13 2008].

14 Defense counsel has repeated his request for this information several  
15 times, including most recently on October 12, 2009:

16 Pursuant to Rule 15 and *Brady*, I am requesting an itemization of  
17 all monies that has received as a result of her book  
18 *Stolen Innocence* and any back up documentation. This request  
19 includes any monies arising out of the book including sale of  
20 movie, television, overseas rights, etc. I am entitled to present to  
21 the jury financial benefits she has received as a result of the  
22 actions against Mr. Jeffs.

23 [Correspondence to Mohave County Attorney Matthew J. Smith, October 12,  
24 2009].

25 To date, the defendant has not received the requested materials.  
26 Accordingly, the defendant now requests this Court to issue its order directing  
27 the State and/or to disclose an itemization of all financial benefits  
28 that has received as a result of the publication of her book,

1 including her book contract, any other financial benefits she has received, will  
2 receive, expects to receive arising out of the publication of the book, including  
3 the sale of ancillary rights, and any benefits from media appearances and  
4 connected expenses.

## 6 II. DISCUSSION

7 Rule 15.1(b)(8) requires the state to disclose:

8 All then existing material or information which tends to mitigate  
9 or negate the defendant's guilt as to the offense charged, or which  
10 would tend to reduce the defendant's punishment therefor.

11 The Comment to the rule specifically notes that "the prosecutor [is] obligated  
12 to disclose information which lessens the credibility of his own witnesses."  
13 Comment to Rule 15.1, Arizona Rules of Criminal Procedure [citing *Giglio v.*  
14 *United States*, 405 U.S. 150 (1972)].

15 It has long been settled that the duty to disclosure *Brady* material extends  
16 to any information which may tend to impeach a witness or discredit the  
17 witness's testimony. *United States v. Bagley*, 473 U.S. 667 (1985); *Giglio*,  
18 *supra*; *Giles v. Maryland*, 386 U.S. 66 (1967); *Napue v. Illinois*, 360 U.S. 264  
19 (1959).

20 Impeachment evidence...as well as exculpatory evidence, falls  
21 within the *Brady* rule. Such evidence is "evidence favorable to an  
22 accused" so that, if disclosed and used effectively, *it may make the*  
23 *difference between conviction and acquittal.*

24 *State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 239, 836 P.2d 445, 452  
25  
26  
27  
28

1 (App. 1992) [quoting *Bagley*, 473 U.S. at 676, and supplying emphasis]. In  
2 addition, a prosecutor's ethical duties to disclose exculpatory information are  
3 broader than the constitutional due process obligation. Arizona Ethics  
4 Committee Opinion, 97-07 (March 18, 1994).

5  
6 The State therefore has the duty to disclose the requested impeachment  
7 materials regarding complaining witness

8  
9 To the extent that the State may claim that the requested materials are  
10 solely in the possession of the victim, they must nevertheless be disclosed to  
11 the defendant. Rule 15.1(g) of the Arizona Rules of Criminal Procedure states  
12 that:

13  
14 Upon motion of the defendant showing that the defendant has  
15 substantial need in the preparation of the defendant's case for  
16 material or information not otherwise covered by Rule 15.1, and  
17 that the defendant is unable without undue hardship to obtain the  
18 substantial equivalent by other means, the court in its discretion  
19 may order any person to make it available to the defendant. The  
20 court may, upon the request of any person affected by the order,  
vacate or modify the order if compliance would be unreasonable  
or oppressive.

21 [Emphasis added].

22 The authorities discussed above have already demonstrated the  
23 substantial need for impeachment material concerning any state witness. This  
24 extends to impeachment materials regarding an alleged victim. *State ex rel.*  
25 *Romley* held that a defendant's due process right to a fair trial and  
26  
27  
28

1 constitutional right to confront and cross examine the witnesses against him  
2 was superior to a victim's right to refuse a discovery request.  
3

4 any restrictions on defendant's access to information essential to  
5 preparation for effective, reasonable cross-examination or  
6 impeachment of the victim in this case imposed pursuant to the  
7 Victim's Bill of Rights must be proportionate to the interest of  
8 protecting the victim as balanced against the defendant's due  
9 process right to a fundamentally fair trial. A defendant must be  
10 afforded an opportunity to effectively cross-examine or impeach  
the victim, and she must be allowed to cross-examine even on  
matters that may be potentially revealing, embarrassing or  
prejudicial to the victim.

11 *Romley*, 172 Ariz. at 240, 836 P.2d at 453 [holding that defendant had right to  
12 access victim's medical records].  
13

14 In conclusion, the court noted:

15 The Victim's Bill of Rights was appropriately amended to the  
16 Arizona Constitution as a shield for victims of crimes. *See Slayton*  
17 *v. Shumay*, 166 Ariz. 87, 800 P.2d 590 (1990). However, the  
18 amendment should not be a sword in the hands of victims to  
19 thwart a defendant's ability to effectively present a legitimate  
20 defense. Nor should the amendment be a fortress behind which  
prosecutors may isolate themselves from their constitutional duty  
to afford a criminal defendant a fair trial.

21 *Id.* at 241, 836 P.2d at 454.

22 Accordingly, the defendant also respectfully requests this Court to issue  
23 its order directing \_\_\_\_\_ to disclose the requested materials under Rule  
24 15.1(g) of the Arizona Rules of Criminal Procedure. In the event that neither  
25 the State nor \_\_\_\_\_ produces the requested materials, the defendant will  
26  
27  
28

1 request the sanction of precluding testimony because the defendant  
2 will be unable to effectively cross-examine her. Rule 15.7, Arizona Rules of  
3 Criminal Procedure.  
4

5 Accordingly, the defendant now requests this Court to issue its order  
6 directing the State and/or to disclose an itemization of all financial  
7 benefits that has received as a result of the publication of her book,  
8 including her book contract, any other financial benefits she has received, will  
9 receive, expects to receive arising out of the publication of the book, including  
10 the sale of ancillary rights, and any benefits from media appearances and  
11 connected expenses. The defendant also respectfully requests the Court to  
12 direct the State to disclose any other benefits, as yet undisclosed, that  
13 has received from any governmental source or from other third parties arising  
14 of her role as a critic of her former religion or as an accuser/victim of  
15 defendant.  
16

### 17 III. CONCLUSION

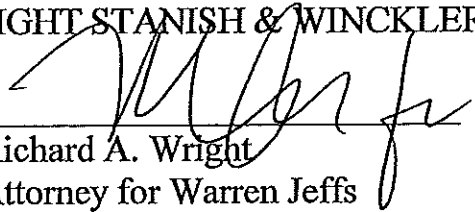
18  
19  
20 For the foregoing reasons, the defendant, Warren Jeffs, by and through  
21 counsel undersigned, hereby respectfully requests this Court, pursuant to Rule  
22 15.1 of the Arizona Rules of Criminal Procedure, to issue its order directing the  
23 State and/or complaining witness to disclose the requested  
24 impeachment material regarding  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RESPECTFULLY SUBMITTED this 20th day of November, 2009.

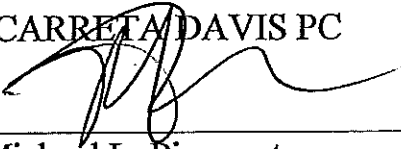
WRIGHT STANISH & WINCKLER

By

  
Richard A. Wright  
Attorney for Warren Jeffs

PICCARRETA DAVIS PC

By

  
Michael L. Piccarreta  
Jefferson Keenan  
Attorneys for Warren Jeffs

Original of the foregoing mailed  
this 20th day of November, 2009, to:

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

Copy of the foregoing emailed  
this 20th day of November, 2009, to:

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

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