

psb

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

Matthew J Smith
Mohave County Attorney
State Bar No. 010467
315 N. 4th Street
P O Box 7000
Kingman, AZ 86402
Telephone: (928) 753-0719
Fax No : (928) 753-2669
Attorney for Plaintiff

FILED
BY: Dh
2008 JUN -6 PM 1:35
VIRLYNN TINNELL
SUPERIOR COURT CLERK

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

STATE OF ARIZONA,

Plaintiff,

vs.

WARREN STEED JEFFS

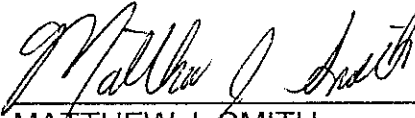
Defendant.

No. CR-2007-743

RESPONSE TO DEFENDANT
JEFFS' MOTION FOR REMAND

COMES NOW, the State of Arizona, by the Mohave County Attorney, and hereby
moves the Court to deny Defendant's Motion to Remand this case to the Grand Jury.
This response is based on the legal reasoning and authorities set forth in the attached
Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED THIS 6th day June, 2008.



MATTHEW J. SMITH
MOHAVE COUNTY ATTORNEY

MEMORANDUM OF POINTS AND AUTHORITIES

The first argument advanced by the Defendant is that he was denied a fair,
impartial, and unbiased grand jury because the prosecutor made no inquiry into the type
and extent of adverse publicity to which the grand jurors were exposed, and no
meaningful inquiry as to whether they could remain unbiased. It is true that under Rule
12.9 of the Arizona Rules of Criminal Procedure that the defendant has the due process

1 process right to a fair, impartial, and unbiased grand jury See *Crimmins vs. Superior*
2 *Court*, 139 Ariz 41, 668 P2d 884 (1983). However, it is also true that the standard of
3 proof at grand jury proceedings is probable cause, not beyond a reasonable doubt

4 The State would agree with the defense that this case has received extensive
5 media coverage and publicity. The State would also point out that this case was
6 presented to the Mohave County Grand Jury on May 10, 2007, which was before the
7 defendant's trial in the State of Utah, in which the coverage was extremely extensive. It
8 is also true that the State did not conduct extensive individual Voir Dire of the grand
9 jurors. Of course the Court had already done its preliminary Voir Dire when the grand
10 jurors were first impaneled. Nonetheless, the prosecutor did ask the grand jury "has
11 anybody read anything about a man named Warren Jeffs?" The prosecutor then
12 instructed the grand jurors, as found on page 11 of the Grand Jury Transcript after it is
13 quite obvious that some of them raised their hands to the prosecutor's question, not to
14 discuss anything they had read about the case during the proceedings, whether it's
15 during testimony or during their deliberations. This was done so that none of the grand
16 jurors would prejudice the other grand jurors concerning anything that they had read or
17 heard about the case.

18 The prosecutor then asked them (page 11 of Transcript) if anything they had
19 read about Warren Jeffs, heard about Mr. Jeffs, whether through television or radio,
20 would not be able to sit on the case and be fair and impartial. Obviously two of the
21 grand jurors raised their hands and upon further voir dire indicated they could not be fair
22 and impartial, and they were immediately excused from the proceedings. According to
23 page 12 of the Transcript, none of the other grand jurors raised their hands to this
24 question concerning the inability to be fair and impartial. At this time the prosecutor
25 further instructed the grand jury to not discuss anything they had heard or read about

1 the case and to not bring any outside information into the proceedings. The prosecutor
2 further asked the grand jurors if any of them had a problem with that instruction, and no
3 one raised their hands. Furthermore, on page 13 of the Grand Jury Transcript, the
4 prosecutor further inquired if the remaining 12 grand jurors could set aside anything
5 they had read or heard about the case and judge the case based solely on the
6 testimony that was going to be provided by the witness, Gary Engels. The prosecutor
7 asked the grand jurors if they felt they could follow that instruction and all 12 of the
8 grand jurors raised their hands in an affirmative response. Additionally, the prosecutor
9 then advised the grand jurors on page 13 if at any time when they heard the evidence
10 presented they felt because of any past information they could not be fair and impartial
11 that they were to bring that to the prosecutor's attention immediately.

12 It is clear that the prosecutor made inquiry into whether or not the grand jurors
13 had heard anything about the case and as to whether they could fair and impartial. The
14 fact that two of the grand jurors specifically admitted that they could not be fair and
15 impartial based on what they had heard about the case shows that the grand jurors
16 obviously heard and listened to what the prosecutor presented to them. The prosecutor
17 made sufficient inquiry into whether or not the grand jurors could be fair and impartial.
18 Individual voir dire is not required before the presentment of a grand jury case. The
19 prosecutor did not want the grand jurors blurting out information that could prejudice the
20 rest of the panel.

21 A second argument made by the defense is that the State failed to instruct the
22 grand jury on the applicable law, specifically that the State did not instruct the grand jury
23 on the meaning of "accomplice" under A.R.S. §13-301. As the defendant concedes in
24 his written motion, the prosecutor did instruct the grand jury on criminal liability based
25 upon conduct of another, which is A.R.S. §13-303 [see Grand Jury Transcript, pages 9-

1 10]. Defendant's argument would be stronger if the State had not instructed the grand
2 jurors on A.R.S. §13-303.

3 Importantly on page ten of the Grand Jury Transcript the prosecutor also read
4 A.R.S. §13-303(B) to the grand jurors. On page ten the prosecutor read as follows:

5 Subsection B further explains the statute. If causing
6 a particular result is an element of an offense, a
7 person who acts with a kind of culpability with
8 respect to the result that is sufficient for the com-
9 mission of the offense is guilty of that offense if:
10 (1) The person solicits or commands another person
11 to engage in the conduct causing such result.
12 Or, (2) the person aids, counsels, aggress to aid,
13 or attempts to aid another person in planning or
14 engaging in the conduct causing such result.

15 In this case causing the result of engaging in sexual intercourse with a child under
16 eighteen years of age is an element of the offense of Sexual Conduct with a Minor. In
17 reciting A.R.S. §13-303(B) to the grand jurors verbatim, the State was in fact defining
18 the term "accomplice" as found in A.R.S. §13-301. For these reasons the Defendant's
19 argument fails.

20 The defense next argues the State presented false or misleading evidence and
21 did not present clearly exculpatory evidence to the grand jury in this case. The first
22 specific argument the defense makes is that the State presented false information to the
23 grand jurors that _____ and Allen Steed were first cousins. Detective Engels did
24 not testify falsely that _____ and Allen Steed were first cousins, as they are, in fact,
25 first cousins. Now in view of the Court's minute order and ruling dated June 4, 2008,
the Court decided that marriages between first cousins of the half blood are not
prohibited by Arizona's Incest Statute. This was obviously a very close call per the
Court's reasoning in its minute order. Nonetheless, Detective Engels' testimony was
not false or misleading, and in any event the defense has now prevailed on the Incest

1 counts which have been dismissed by the Court's Order dated June 4, 2008. This has
2 now become a moot issue due to the Court's ruling.

3 The defense next argues that Detective Engels stated falsely that Warren Jeffs
4 could not legally perform marriages in Nevada, Arizona, or Utah. The State first notes
5 that this is clearly a minor point because there is no dispute that the so-called marriage
6 or sealing ceremony that took place in this case was in fact not a legal marriage as
7 there was no marriage certificate, no marriage license, no blood test, and _____ was
8 only 14 years of age and so was not able to be legally married in the State of Nevada.
9 Furthermore, Detective Engels was answering a grand juror question on page 64 of the
10 Transcript after he had already finished the bulk of his testimony and had merely been
11 summoned back in for a grand juror question. Grand Juror (_____) asked "to your
12 knowledge is Warren Jeffs legally-can legally perform marriages?" Detective Engels
13 answered "no, he cannot". If this answer is in fact wrong, it could not have impacted the
14 grand jurors' deliberations because it was not relevant to any of the issues they had to
15 determine. The defendant clearly performed a marriage that was not legal in this case
16 and knew that this marriage was not legal as there was no marriage license or
17 certificate issued.

18 The defense also incorrectly applied Arizona law on page 17 of its' motion
19 Specifically the defense stated that the marriage between ' _____) and Allen Steed
20 would have been legal in all respects if Allen Steed and one of _____ parents had
21 taken the proper steps to obtain a license from the State and obtain authorization from a
22 judge. The defense relies on A.R.S. §25-102(A) despite the fact that the so-called
23 marriage between Allen Steed and _____ took place in Caliente, Nevada.
24 However, the defense also argues that Engels' testimony was very prejudicial to the
25 defendant because the law permits marriages between individuals such as '

1 and Allen Steed under certain circumstances, and Mr. Jeffs is legally authorized to
2 perform those marriages. This is misleading due to the fact that it was clear that
3 Warren Jeffs knew that this was not a legal marriage, that there was no Superior Court
4 Judge's permission for this 14-year old to get married, and the marriage took place at
5 the Hot Springs Motel in Caliente, Nevada, instead of in the State where the participants
6 resided. It is clear that Mr. Jeffs knew that this "marriage" was not legal and there was a
7 purposeful intent to avoid the authorities and to conduct these marriages in the State of
8 Nevada.

9 The defense next argues that the prosecutor improperly injected repeated
10 prejudicial references to religious practices and beliefs. This part of the defendant's
11 motion is filled with vague references to the grand jury proceedings and the defense's
12 inaccurate version of what they believe the facts were during the relevant time period.
13 In responding to some of the allegations, the State would point out that hearsay is
14 admissible at grand jury proceedings. In further response to the rather vague
15 allegations of improper prejudicial material being introduced to the grand jury, the State
16 would suggest that it did not introduce into evidence aspects of the FLDS Church that
17 were not relevant to the issues at hand. What was presented about the FLDS Church
18 and the influence of the Prophet were matters that were directly relevant to the issue of
19 whether or not there was probable cause to believe Warren Jeffs committed the crimes
20 charged in the Indictment.

21 The final argument advanced by the defense is that the prosecutor improperly
22 controlled and directed the grand jury investigation. Upon questions asked by Grand
23 Juror on page 48 of the Transcript, the prosecutor immediately responded with
24 "okay, the - - that's up to you to decide." The prosecutor then re-read A.R.S. §13-303
25 The State disagrees with the defense characterization of the next few pages of

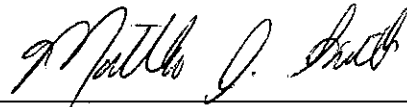
1 questions to Gary Engels, noting that many of the questions were in fact not leading
2 questions. [see page 50 for example]. None of the questions were inaccurate or
3 misleading or resulted in the presentation of false evidence. Leading questions are
4 permitted during grand jury proceedings.

5 The defense further argues that the prosecutor improperly directed the grand jury
6 investigation away from pursuing charges against Allen Steed. Allen Steed is the
7 person that was "arranged" to be with [redacted] by the defendant in this case. Even if
8 the prosecutor did somehow direct the grand jury away from pursuing charges against
9 Allen Steed, this did not effect the indictment involving the defendant. Additionally, on
10 page 65 of the Grand Jury Transcript when Grand Juror [redacted] asked why the draft
11 indictment did not charge Allen Steed, the State responded that one had to look at this
12 particular incident and then told the grand jurors in no uncertain terms that they could
13 charge Allen Steed if they wanted to. All the prosecutor did is tell the grand jurors that
14 this was only a draft indictment (page 65) and that the prosecutor did not want to
15 discuss any reasons why Allen Steed was not put in the proposed draft indictment.
16 Again on page 66 at lines 14 and 15 the prosecutor told the grand jurors "But you
17 absolutely, you know, have that right to decide whether or not he should be charged".
18 So once again the prosecutor told the grand jurors that they had the absolute ability to
19 charge Allen Steed if they wanted to do so. Finally, again on page 70 when Grand
20 Juror [redacted] stated, "Were just deciding on Warren Jeffs?", the prosecutor told the
21 grand jurors "Well, you have the right to decide on Allen Steed if you want to also,
22 though " The prosecutor did not improperly direct the grand jury in this case from
23 considering potential charges against Allen Steed

24 The State would also point out that on pages 56 and 57 of the Grand Jury
25 Transcript that the prosecutor gave limiting instructions to the grand jurors considering

1 the FLDS religious and the practice of polygamy. On page 57 the prosecutor instructed
2 the grand jurors not to consider the practice of polygamy for any purpose other than
3 whatever relevance it has on the situation and why things in the case have transpired.
4 The prosecutor went on to tell the grand jurors that it would be inappropriate for anyone
5 to decide to indict Warren Jeffs just because the people of Colorado City were engaged
6 in polygamy or that Warren Jeffs was involved in promoting polygamy and that the
7 grand jurors just did not like the practice of polygamy. For all these reasons, the State
8 requests that the Defendant's motion be denied.

9 RESPECTFULLY SUBMITTED this 6th day of June, 2008.

10 

11 _____
MATTHEW J. SMITH
12 MOHAVE COUNTY ATTORNEY

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

14 HONORABLE STEVEN F. CONN
SUPERIOR COURT JUDGE

15 Michael L. Piccarreta
16 PICCARRETA, DAVIS & STORIE, P.C.
145 South Sixth Avenue
17 Tucson, Arizona 85701

18 Richard Wright
WRIGHT STANISH & WINCKLER
19 300 S. Fourth Street, Suite 701
Las Vegas, NV 89101

20 By Bev Brooks