

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

FILED
BY: *scj*

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HONORABLE STEVEN F. CONN
DIVISION 3
DATE: APR. 3, 2009

SC*
VIRLYNN TINNELL
SUPERIOR COURT CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,

vs.

WARREN STEED JEFFS,

Plaintiff,

Defendant.

No. CR-2007-0743 & CR-2007-0953

The Court has read the Defendant's Motion to Strike Response to Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property filed on February 13, 2009. The Court has considered the arguments of counsel presented on that motion on March 30, 2009.

As reflected in the title of the above pleading, the main sanction being sought by the defense is to strike certain portions of the State's response to the defense motion to suppress. There are 2 reasons asserted for this sanction. First, that the State has thwarted during the interview process inquiry by defense counsel of Texas law enforcement officers designed to establish what everyone involved in at least the Arizona case seems to acknowledge, which is that the original call leading to the issuance of the search warrant in Texas was a hoax. Second, that the State has failed to acknowledge in its response that the call was a hoax and at least appears to assert that it was a legitimate call.

The defense cites Rule 15.7 as the basis for their request for a sanction. That rule provides that if a party fails to make a disclosure required by Rule 15, any other party may move to compel

disclosure and for appropriate sanctions. Rule 15.7(a)(1-5) sets forth specific sanctions which are available, none of which include the striking of pleadings. Rule 15.7(a)(6) allows for "any other appropriate sanction", which could presumably include the striking of a pleading.

The Court deals with Rule 15.7 infrequently, for which it is thankful. In every case in the Court's memory where it has been asked to consider Rule 15.7 sanctions, there has been an allegation by one party that the other party failed to disclose something to them. This is certainly consistent with the plain language of the rule. It is not at all clear that Rule 15.7 contemplates sanctions being imposed because one party disagrees with factual assertions in a responsive pleading of another party or because an opposing party interferes with a pretrial interview or deposition.

Interestingly, Rule 11 of the Arizona Rules of Civil Procedure does provide for some accountability on the part of attorneys who make factual avowals in pleadings and provides for sanctions if knowingly wrong assertions are made therein. However, despite defense counsel's observation at argument that he felt like he was reliving a prior experience from a deposition in a civil case while conducting the interviews in this case, the civil rules of procedure do not apply.

The Court continues to suspect that the point of the defense motion is to express counsel's frustration that his attempts to pursue legitimate inquiries into facts that could support his attempt to suppress evidence which might, if the prosecution ever made up its mind, be used against the Defendant in this case are being obstructed by the Texas authorities. The Court further suspects that the last thing desired by the Texas judiciary or law enforcement officers is to have any aspect of their prosecution undermined, compromised or otherwise impacted by the rulings of a judge in some other state. The fact remains that the Court will eventually rule on the defense motion to suppress by determining what the facts are based on the evidence presented, not based on counsels'

pleadings, will identify what it considers the applicable law, will apply that law to the facts, and will by that process formulate a ruling on the motion. The Court under the circumstances of this case sees no legal or factual basis for striking any part of the State's pleading.

IT IS ORDERED denying the Defendant's Motion to Strike Response to Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property, insofar as the sanction being requested is the striking of a portion of the State's pleading.

The Court acknowledges that the defense motion suggests, almost as an afterthought, an alternative sanction of ordering the Texas officers to answer questions regarding the falsity of the call leading to the search warrant. This alternative sanction is raised in the last sentence of the last paragraph of what is a 9-page pleading. Many of the observations in this Order would apply equally to that request. The Court is also concerned that the facts and law applicable to that particular request have not been sufficiently briefed. Although defense counsel argued at the hearing on the motion that he was requesting a deposition of the witnesses, that is not clear from the motion. The Court is aware that it previously granted a request that the 2 officers in question submit to a deposition, but it is unclear to the Court whether the questioning of those witnesses occurred in the context of a voluntary personal interview or a court-ordered deposition, a circumstance which could be legally relevant in identifying the consequences of refusing to answer relevant questions.

IT IS ORDERED denying the Defendant's Motion to Strike Response to Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property, insofar as the sanction being requested is to order certain witnesses to answer certain questions put to them, subject to reconsideration upon this issue being presented more directly to the Court.

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cc:

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