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VIRLYNN TINNELL
CLERK SUPERIOR COURT
BY: PSG DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MOHAVE**

**HONORABLE STEVEN F. CONN**
**DIVISION 3**
**DATE: DEC. 21, 2009**

**SC***
**VIRLYNN TINNELL, CLERK**

**COURT NOTICE/ORDER/RULING**

**STATE OF ARIZONA,**
**Plaintiff,**

**vs.**

**WARREN STEED JEFFS,**
**Defendant.**

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

The Court has reviewed the Defendant's Motion for Deposition of Witnesses Sam Brower and Dan Fischer and all the other deposition excerpts or pleadings referred to in the Minute Orders dated September 3, 2009, September 16, 2009, and October 28, 2009. The Court has considered the arguments of counsel presented at the hearing on December 11, 2009. The Court has reviewed the files in both of these cases, paying particular attention to the Orders entered regarding depositions of the witnesses that were the subject of this motion and also other witnesses whose depositions were requested.

The Court engaged in that last endeavor because it was assuming that there was at least one witness who had specifically been found to have relevant information and to have been ordered to be deposed due to having information regarding benefits, monetary or otherwise, that had been given to the alleged victims in these cases. The Court understood that it had actually ruled upon that issue with respect to at least one witness, but it cannot identify in either court file an instance in which it has actually done so. The Court may have been thinking of the prior

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prosecutions of other FLDS members or it may be recalling discussions which did not end up being memorialized in any formal written Order.

Most of the decisions that the Court can identify having made in these cases regarding deposing witnesses appear to have involved more logistical issues with potential witnesses that both parties seemed to agree were material witnesses. The Court did order that Sam Brower submit to a deposition over objections from the State that did not include that he was not a material witness. The Court never ordered the deposition of Dan Fischer. If the Court had ever been asked specifically to rule on the issue of materiality, it would have concluded that any person who had information suggesting that an alleged victim had realized a financial gain by coming forward and accusing the Defendant of criminal behavior was a material witness who would be subject to deposition if refusing to grant a personal interview. The Court will start with the assumption that Sam Brower and Dan Fischer would have been subject to being deposed for the above reasons, an assumption which is borne out by the transcripts of their depositions.

The issues raised in the pleadings in these cases are complex, including privilege and conflict of laws issues rarely encountered in criminal cases. The Court is not convinced that this issue really is that complex. The Court feels that this issue is no more complex than Rule 15.3(a)(2). That rule allows for the deposition of a person whose testimony is material to the case or necessary to adequately prepare a defense or investigate the offense if that person will not cooperate in granting a personal interview.

Both of these witnesses cooperated in granting not only a personal interview but a deposition, although Mr. Brower did so because he was ordered to. The Court has already ruled regarding an unrelated witness that a witness can attach conditions to the granting of an interview that are such as to render that witness uncooperative under Rule 15.3. It would seem obvious that agreeing to a personal interview but refusing to answer questions material to the

issues in a case would constitute not cooperating in a personal interview. Conversely, however, it would seem that a witness who grants a personal interview, answers all questions regarding material issues but refuses for whatever reasons, whether valid or invalid, to answer questions regarding immaterial issues, has cooperated within the meaning of Rule 15.3.

The depositions of the 2 witnesses involved indicate that they were asked and answered numerous questions providing information with which defense counsel will undoubtedly seek to impeach the credibility of the alleged victims. The Court determines that the questions they did not answer related to remote, peripheral, tangential issues which were not relevant to this case. Whether the legal basis for their not answering those questions was valid is an intriguing issue, but the Court feels that the ultimate question is not whether they were legally justified in refusing to answer those questions but whether the questions related to a material issue. The Court determines that they did not. The Court determines that Dr. Fischer and Mr. Brower have cooperated in being interviewed or deposed on questions put to them regarding material issues and that they are not subject pursuant to Rule 15.3(a)(2) to further deposition.

IT IS ORDERED denying the Defendant's Motion for Deposition of Witnesses Sam Brower and Dan Fischer.

Counsel for the Defendant has filed a Motion to Determine Nature, Scope and Extent of Proposed Expert Testimony which was discussed to some extent at the hearing on December 11, 2009.

IT IS ORDERED affirming the Court's Order entered at that hearing directing the State by no later than January 4, 2010, to disclose to the defense a list of experts they intend to call at trial and the areas or issues upon which they are expected to express expert opinions and that the Court will defer acting on the defense motion until after the State has done so and after further pleadings are filed.

Counsel for the Defendant has filed a Request for Evidentiary Hearing on Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property. The State has filed a Response raising some procedural issues but not contesting that a hearing has to be set. Counsel advised the Court at the hearing on December 11, 2009, that 2 days sometime in February, 2010, should be sufficient. The Court reminds counsel of its Minute Order dated January 20, 2009, in which it indicated how it would be likely to schedule that hearing.

IT IS ORDERED setting these matters for Evidentiary Hearing and Oral Argument on the Defendant's Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property on Wednesday, February 17, 2010, at 9:30 a.m.

Counsel for the Defendant has filed a Motion for Deposition of Witness Carolyn Jessop and a Motion for Disclosure of Impeachment Material Concerning Complaining Witness, the latter as to CR-2007-0743 only. Responses and Replies have been filed. Both counsel agreed at the hearing on December 11, 2009 to submit these motions for the Court's ruling without argument.

As to the Motion for Deposition of Witness Carolyn Jessop, the Court hopes that counsel can appreciate the Court's dilemma. By submitting the motion on the pleadings, the Court must make whatever factual determinations would be necessary to rule on the motion based solely on those pleadings. From them the Court draws the following factual conclusions. Carolyn Jessop has been disclosed as an expert witness for the State. She has submitted to 2 personal interviews with defense counsel. She was requested to bring to those interviews certain financial records, including her tax returns, but did not do so. The second interview was ended with an apparent agreement that there were still further questions to be asked and that the interview would be completed at a later date. The State avows that they have disclosed to the defense copies of Ms. Jessop's book deal contracts. They do not address documentation of

other ancillary financial benefits such as movie rights, speaking engagements or expenses, but they do assert that she has "spent a couple of hours" answering defense questions regarding her finances. Ms. Jessop initially agreed but then declined to disclose to the defense her income tax returns.

Whether the parties and the witness initially agreed to a continuation of the interview does not necessarily enable the Court to conclude that there were still questions regarding material issues that were left unanswered. The focus of the defense request appears to be on Ms. Jessop's tax returns. The Court has not been asked to order her to disclose her tax returns, only to order her to submit to further questioning. The Court expresses no opinion as to whether those returns would be discoverable because that issue has not been raised.

Based on the pleadings alone, the Court would find it difficult to conclude that a witness who had been questioned on 2 separate occasions for at least "several hours" and had provided some financial records which were then disclosed to the defense has refused to cooperate in granting a personal interview within the meaning of Rule 15.3(a)(2). Her reneging on a promise to submit to further questioning and to provide her tax forms may be disrespectful and irritating to defense counsel and may prolong her eventual trial testimony, but the Court is unable to conclude that it renders her uncooperative.

IT IS ORDERED denying the Defendant's Motion for Deposition of Witness Carolyn Jessop.

As to the Defendant's Motion for Disclosure of Impeachment Material Concerning Complaining Witness, this motion presents a more narrowly defined legal issue. The defense wants evidence of financial gain the alleged victim has received as a result of or even partly related to her accusations against the Defendant, gain which could conceivably involve significant amounts of money. The State asserts the victim's right to be protected against

pretrial interview or discovery requests. The defense counters with the Romley decision which held that under certain circumstances victims' rights must yield to a defendant's due process rights.

The Court understands that defense could just wait and question the alleged victim regarding her financial gain. Presumably, if she provided incomplete or incorrect information or proclaimed to be ignorant of her financial affairs, the State's position would be that that is how victim's rights works and that the defense would have to be satisfied with her answers. That does not appear to be the procedure contemplated in the Romley case. The Court believes, as it has referred to earlier in this Order, that whether an alleged victim in this case has benefitted financially, either directly or indirectly, from her accusations against the Defendant is an appropriate area for impeachment at trial. Whether the Court endorses that as a viable argument is not the issue. It is certainly an argument that the defense is entitled to make to the trier of fact for them to assess its viability. The alleged victim's financial gains are no less discoverable for due process reasons than the medical records of the victim in Romley.

IT IS ORDERED granting the Defendant's Motion for Disclosure of Impeachment Material Concerning Complaining Witness. To the extent that the State may assert that the requested materials are not in their possession, they are obligated under this Order to obtain them from the alleged victim and to disclose them to the defense.

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cc:

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