

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FILED

ST.

IN AND FOR THE COUNTY OF MOHAVE

2008 DEC -9 PM 3:45

HONORABLE STEVEN F. CONN  
DIVISION 3  
DATE: DEC. 9, 2008

VIRLYNN TINNELL SC\*  
VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,  
  
Plaintiff,  
  
vs.  
  
WARREN STEED JEFFS,  
  
Defendant.

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

Counsel for the Defendant has filed a Motion for Deposition of Flora Jessop. The State has filed a Response indicating that they take no position on the motion. The Court determines from the State's Response that they do not dispute the facts asserted in the defense motion and simply request that the Court apply those facts to the applicable law and rule on the motion. The Court for purposes of ruling on the defense motion assumes that the facts therein are true.

The defense had previously filed a Notice of Scheduled Interview indicating that Ms. Jessop would be interviewed on November 24, 2008, at the Attorney General's Office in Phoenix. The request for deposition asserts that Ms. Jessop appeared at the scheduled interview with a television reporter and cameraman of her choosing and insisted that her interview be covered by them as a media event.

Under Rule 15.3(a)(2), the Court may order to submit to a deposition a person whose testimony is material to the case or necessary adequately to prepare a defense or investigate the offense if the person will not cooperate in granting a personal interview. It is not immediately obvious to the Court that Ms. Jessop is a material witness in this case. The Court is personally aware that

almost immediately after the arrest of the Defendant in this case a Phoenix television station interviewed both Ms. Jessop, who is apparently not a named victim in any pending criminal case against the Defendant, and the Arizona Attorney General, who is not prosecuting any pending criminal cases against the Defendant and who did not prosecute and may have declined to prosecute cases recently pending against other FLDS members in this jurisdiction. Neither Ms. Jessop's self-proclaimed status as spokesperson for all child brides of FLDS members whether they consider themselves victims or not nor her ability to end up in front of cameras covering these and related cases makes her a material witness. However, the Court gathers from the pleadings in this file that the defense is asserting that Ms. Jessop may have had some communication with the person who is believed to have made the initial telephone call which led to the issuance of the search warrants in Texas which have been challenged by the defense in this case. Although the State has previously indicated that it does not intend to use any evidence seized as a result of those search warrants and that a ruling by this Court on the legality of those searches would be unnecessary, the hearing on October 28, 2008, did not necessarily convince either the Court or the defense that that issue would never have to be addressed. As long as the circumstances under which those warrants were issued could become an issue at some point, it would seem that a person having information about those circumstances could conceivably be a material witness. The State appears to agree. They are not asserting that she is not a material witness and apparently traveled to Phoenix earlier to participate in her interview. The Court determines that Ms. Jessop is a material witness for purposes of Rule 15.3(a)(2).

The real issue to be addressed is whether Ms. Jessop's insistence that her interview receive media coverage is an attachment of such conditions to the interview as to render her uncooperative under the rule. In Mota v. Buchanan, 26 Ariz. App. 246 (1976), the Arizona Court of Appeals held that a witness is not the exclusive property of either the prosecution or the defense and that the witness can decide who is to be present at the interview. However, this is not an unfettered right.

In Kirkendall v. Fisher, 27 Ariz. App. 210 (1976), the Court of Appeals held that the insistence of three witnesses, all police officers, that they be interviewed together rather than separately made the situation untenable for defense counsel to discover needed material and constituted a lack of cooperation under the rule. The Court determines that a desire to turn a pretrial discovery process into a media event, whether for self-promotion purposes or otherwise, is a failure to cooperate in granting a personal interview pursuant to Rule 15.3(a)(2).

IT IS ORDERED granting the Defendant's Motion for Deposition.

IT IS ORDERED directing defense counsel to submit to the Court for its signature an Order directing Ms. Jessop to submit to a deposition. That proceeding will take place at a time and place of defense counsel's choosing. Ms. Jessop will not be allowed to be accompanied at the deposition by anyone other than legal counsel if applicable. The Court will assume from discussions at prior hearings, unless advised otherwise, that defense counsel is waiving any right that the Defendant would have to be present at the deposition.

cc:

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Honorable Steven F. Conn  
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