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**IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**KATIE BAKER'S RESPONSE
TO COURT'S ORDER TO SHOW
CAUSE**

No. 061500526

Honorable James L. Shumate

Katie Baker, through her undersigned counsel, respectfully submits the following
Response to Court's Order to Show Cause.

INTRODUCTION

Contempt orders serve a vital role in protecting and enforcing the authority of the Court.
However, "[t]he very amplitude of the contempt power is a warning to use it with discretion, and

a command never to exert it where it is not necessary or proper." *State v. Long*, 844 P.2d 381, 387 (Utah 1992). This directive is particularly appropriate to heed when the individual whose conduct is at issue has simply made a mistake. Such is the case here. KUTV Reporter Katie Baker mistakenly interviewed a prospective juror in the Warren Jeffs' case, not having knowledge of the Court's prohibition against such interviews, and mistakenly believing that such an interview was proper because the prospective juror almost certainly would not be seated. While Ms. Baker clearly made a mistake in conducting this interview, her actions do not constitute contempt because she did not have actual knowledge of the Decorum Order's prohibition against interviews with prospective jurors, she did not willfully and knowingly refuse to comply with the Court's Order, and she intended no affront or challenge to the authority of the Court. Accordingly, the Court should decline to hold Ms. Baker in contempt and vacate the Order to Show Cause.

FACTUAL BACKGROUND

Ms. Baker submits the following statement of facts ("Facts") relevant to this issue. If the Court desires, Ms. Baker is prepared to testify to these facts at the hearing scheduled on October 17, 2007 at 9:00 a.m.

1. On August 29, 2007, the Court entered a Third Amended Decorum Order in the Warren Jeffs criminal case "designed to govern the expectations of the people involved in the trial and those observing the trial . . ." [Decorum Order, at 1.]

2. This Decorum Order listed several "Guidelines for the Media" and specifically stated that:

No party, counsel, representative of the media, or member of the public shall publish in any way the name or address of any juror or prospective juror, nor a likeness of any juror or prospective juror, in a manner that discloses or may disclose the identity of that person. This restriction also includes any photographs in which jurors are in the background. No contact or conversation with a prospective juror will be permitted until dismissed from jury service. Moreover, no contact or conversation will be permitted with any seated juror until discharged after trial. This prohibition shall apply to prospective jurors until the jury is discharged after trial. This does not prohibit publication of the demographic composition of the jury.

[Decorum Order, Guideline for the Media, ¶ 3].

3. KUTV 2 News reporter Katie Baker was one of many reporters who converged on St. George to cover the Warren Jeffs trial. [Baker Affidavit ¶ 2].

4. At the time, Ms. Baker had been employed by KUTV as a reporter and weekend anchor for approximately ten months. [*Id.* ¶ 3].

5. The Jeffs trial was the first high-profile trial that Ms. Baker had ever covered. [*Id.* ¶ 4].

6. Prior to the Jeffs trial, Ms. Baker had reported on fewer than five criminal cases. In none of those cases had she been aware of or ever reviewed any Decorum Order entered by the Court governing the conduct of news reporters. [*Id.* ¶ 5].

7. While en route to St. George to cover the Jeffs trial, Ms. Baker reviewed the Court's Decorum Order. [*Id.* ¶ 6].

8. While Ms. Baker recalls that the Order prohibited the use of cell phones in the courtroom and provided for a media pool photographer, she has no recollection of Paragraph 3 of

the "Guidelines for the Media" or any other provision governing interviews or contact with prospective jurors. [*Id.* ¶¶ 7-8].

9. On or about September 10, 2007, Ms. Baker was covering the jury selection process. [*Id.* ¶ 9].

10. Ms. Baker was standing outside the courthouse when several prospective jurors left the courtroom. Ms. Baker began speaking to one of them, Ms. Mo Webb. [*Id.* ¶¶ 10-11].

11. Ms. Webb expressed a strong dislike for Mr. Jeffs and told Ms. Baker that she was "going home." [*Id.* ¶ 12].

12. Ms. Baker subsequently asked Ms. Webb if she could interview her on camera. Ms. Webb agreed. [*Id.* ¶ 13].

13. During the interview, Ms. Webb again expressed a strong dislike for Mr. Jeffs, saying that she did not like him and did not agree with what he does. [*Id.* ¶ 14].

14. Because of Ms. Webb's statements, Ms. Baker believed that Ms. Webb would almost surely be dismissed as a juror in the near future. Consequently, Ms. Baker believed (incorrectly, as it turned out) that it was proper to interview Ms. Webb. [*Id.* ¶ 15].

15. The interview of Ms. Webb was broadcast on KUTV news that night during the 5:00 p.m. and 6:00 p.m. newscasts. A sound bite of the interview with Ms. Webb was also broadcast at 10:00 p.m. [*Id.* ¶¶ 16-17 and Exhibit "A" hereto].

16. The next morning, September 11, 2007, Nancy Volmer from the Administrative Office of the Courts telephoned KUTV's managing editor, Mark Biljanic, to express concern about the Webb interview. [*Id.* ¶ 18].

17. Mr. Biljanic relayed this conversation to Ms. Baker, who immediately called Ms. Volmer. [*Id.* ¶ 19].

18. Ms. Baker explained to Ms. Volmer that she had mistakenly believed that she could interview Ms. Webb and profusely apologized for her mistake. [*Id.* ¶ 20].

19. After learning of the Court's concerns, KUTV immediately removed the story from the station's website. [*Id.* ¶ 21].

20. Throughout the day on September 11, 2007, Ms. Baker repeatedly contacted Ms. Volmer and requested that she be allowed to personally apologize to the Court for her mistake. [*Id.* ¶ 22].

21. During her subsequent reporting on the trial, Ms. Baker took extra precautions to ensure that she strictly followed the Court's Decorum Order. For example, she would not even film the courthouse for fear of inadvertently filming a prospective juror. [*Id.* ¶ 23].

22. Not having heard anything further from Ms. Volmer or the Court, and having been permitted to continue covering the trial on behalf of KUTV, Ms. Baker believed that the matter had been resolved. [*Id.* ¶ 24].

23. On September 25, 2007, this Court issued an Order to Show Cause for Ms. Baker to appear before it "to show cause why she should not be held in contempt of court for Violation of Court's Decorum Order." [Order to Show Cause] (emphasis in original).

ARGUMENT

Ms. Baker made a mistake by interviewing a prospective juror, but her conduct does not constitute contempt. Under Utah law, a party may be charged with contempt for "[d]isobedience of any lawful judgment, order or process of the court." Utah Code Ann. § 78-32-1(5); *see also id.* § 78-7-5(4) ("Every court has authority to: . . . (4) compel obedience to its judgments, orders, and process[.]"). To be found guilty of contempt, "a party must have (1) known of the duty imposed by the court's order, (2) had the ability to comply with the order, and (3) willfully and knowingly refused to comply." *Utah Farm Prod. Credit Ass'n v. Labrum*, 762 P.2d 1070, 1074 (Utah 1988). In a criminal proceeding, "[t]hese three elements must be proven beyond a reasonable doubt and by clear and convincing evidence in a civil contempt proceeding." *Van Hake v. Thomas*, 759 P.2d 1162, 1172 (Utah 1988) (citations omitted), *superseded by rule on other grounds as stated in State v. Hurst*, 821 P.2d 467 (Utah Ct. App. 1991).¹

Because Ms. Baker did not know of the duty imposed by the Court's Order and did not willfully violate the Order, she should not be found guilty of either civil or criminal contempt.

First, Ms. Baker did not know of the duty imposed by the court's Order because she did not have *actual* knowledge that the Decorum Order prohibited her from speaking to prospective jurors. [Facts ¶ 8]. *See Ottomanelli v. Ottomanelli*, 17 A.D.3d 647, 648 (N.Y. App. Civ. 2005) ("To sustain a finding of civil contempt based upon a violation of a court order, it is necessary to

¹ "For all future cases, we will follow the rule that a contempt order is criminal if the fine or sentence imposed is fixed and unconditional but is civil if the fine or imprisonment is conditional such that the contemner can obtain relief from the contempt order merely by doing some act as ordered by the court. Further, a contempt order is civil if the order is to pay a fine to the other party rather than to the court." *Van Hake v. Thomas*, 759 P.2d 1162, 1168 n.5 (Utah 1988), *superseded by rule on other grounds as stated in State v. Hurst*, 821 P.2d 467 (Utah Ct. App. 1991).

establish that . . . the person alleged to have violated the order had *actual* knowledge of its terms." (internal quotations omitted) (emphasis added)); 17 Am. Jur. 2d *Contempt* § 25 (2004) ("[I]n order to find the defendant's conduct willful, it must be shown that he or she had *actual* knowledge of the judgment or order which was disobeyed." (emphasis added)). Although Ms. Baker reviewed the Decorum Order while en route to St. George to cover the trial, she has no recollection of reading the provisions proscribing interviews with prospective jurors and had no knowledge of any other prohibition on interviewing prospective jurors. [Facts ¶¶ 7-8]. Specifically, when Ms. Baker conducted the interview of Ms. Webb, she had no recollection of the juror interview prohibition and thus did not know that her actions were prohibited by the Order. [Facts ¶ 8].

Second, even if the Court were to determine that Ms. Baker had sufficient knowledge of the requirements of the Decorum Order, which she did not, it still must find that she *willfully and knowingly refused* to comply with the Order to find her in contempt. See *Utah Farm Prod. Credit Ass'n*, 762 P.2d at 1074; see also *Powers v. Taylor*, 378 P.2d 519, 520 (Utah 1963) ("The essence of contempt of courts is the *willful* disregard or disobedience of its orders." (emphasis added)), *superseded by rule on other grounds as stated in State v. Hurst*, 821 P.2d 467 (Utah Ct. App. 1991). This would require evidence that Ms. Baker engaged in "deliberate conduct" and "intended [her] acts to obstruct the judicial process." *State v. Long*, 844 P.2d 381, 386-87 (Utah Ct. App. 1992) (interpreting the "willful neglect or violation" standard of Utah Code section 78-32-1(3)).

No such evidence is present here. Ms. Baker could not have willfully and knowingly refused to comply with the Decorum Order because she had no knowledge of the existence of a prohibition on interviews with prospective jurors in that Order. [Facts ¶ 8]. Moreover, because Ms. Webb had expressed strong opinions against Mr. Jeffis and had indicated that she was told to go home, Ms. Baker believed that she almost certainly would be dismissed from the jury panel. [Facts ¶ 14]. Accordingly, Ms. Baker assumed (incorrectly) that it was permissible for her to interview Ms. Webb. [*Id.*]. Such good faith acts, albeit mistaken, do not support a finding that she intended to obstruct the Court's judicial process.

Arguably, Ms. Baker should have more carefully reviewed and understood the contents of the Decorum Order; however, "negligent or accidental mistakes [are] not sufficient under Utah common law to sustain a criminal contempt conviction," *Long*, 844 P.2d at 386 (Utah Ct. App. 1992), or likely even a civil contempt conviction, see 17 Am. Jur. 2d *Contempt* § 27-28 (indicating that although "willfulness is not a necessary element of civil contempt," "one whose offense amounts to no more than an 'honest mistake' is not guilty of a civil contempt"). For example, in *Long*, a trial court found an attorney guilty of indirect contempt for informing his client not to report to jail. 844 P.2d at 383. The Utah Supreme Court, however, vacated the conviction, reasoning that the attorney "was genuinely confused about the proper motion required to stay a sentence pending appeal," and although he made a "negligent mistake," there was "insufficient evidence to support a finding defendant willfully neglected or violated his duty as an attorney." *Id.* at 387-88.

Similarly, Ms. Baker did not know about the Decorum Order's prohibitions on interviews with prospective jurors. Ms. Baker believed that because Ms. Webb would not be seated as a juror, it was proper for her to interview Ms. Webb. [Facts ¶¶ 8, 13-14]. As a news reporter covering the trial, Ms. Baker should have read the Decorum Order more carefully; however, her failure to do so was not a "deliberate contumacious act[] or omission[]" sufficient to sustain a contempt conviction. *See Long*, 844 P.2d at 387; *see also Hardy v Hardy*, No. 20040812-CA, 2005 WL 3131588, at *1 (Utah Ct. App. Nov. 25, 2005) (indicating that even if defendant had duty to stay up to date on changes in visitation statute, defendant could not be held in contempt because plaintiff could not prove that defendant had "willfully failed to remain current in the law").²

Finally, the fact that Ms. Baker's conduct was not willfully and deliberately disobedient is further supported by the actions she took to rectify her conduct immediately upon learning that the interview *might* be improper. Ms. Baker immediately called Ms. Volmer to personally apologize and asked to apologize to this Court directly. [Facts ¶¶ 17-18, 20]. She immediately contacted her news station to ensure that the Webb interview was removed from KUTV's website. [Facts ¶ 19]. And in subsequent on-camera reports, Ms. Baker used the adjacent red rock cliffs as the camera backdrop instead of the courthouse so KUTV would not inadvertently film a prospective juror. [Facts ¶ 21]. When combined with her lack of actual knowledge of the juror interview prohibition, these contemporaneous actions clearly indicate that Ms. Baker did not deliberately disobey the Court's Decorum Order. *See Faith v. Iowa Dist. Court*, 710 N.W.2d

² A copy of the *Hardy* opinion is attached hereto as Exhibit "A."

257 (Iowa Ct. App. Nov. 25, 2005) (unpublished opinion) (indicating that defendant's conduct did not rise to the level of willful disobedience where she was mistaken about modification order's requirements and attempted to rectify her mistake once she learned of her incorrect interpretation)³; *Hansen v. State*, 226 S.W.3d 137, 140 n.2 (Mo. 2007) (denying motion for contempt "[b]ecause the purpose of a civil contempt order is to compel compliance with a court order and not to punish a party and because the Division promptly acted to rectify the situation[.]" (citation omitted)).

Upon examining all of these facts and circumstances, it is clear, under either a criminal or civil contempt standard, that Ms. Baker did not knowingly and willfully disregard this Court's Decorum Order. Accordingly, the Court should not hold her in contempt.

CONCLUSION

While the Court's contempt power is vital to protect the authority of the Court and punish those who willfully disobey it, those interests are not implicated by Ms. Baker's actions in this case. Ms. Baker made an honest mistake. She apologized for it at the time, and took steps to ensure that it would not happen again. Accordingly the Court should vacate its Order to Show Cause and decline to hold Ms. Baker in contempt.

³ A copy of the *Path* opinion is attached hereto as Exhibit "B."

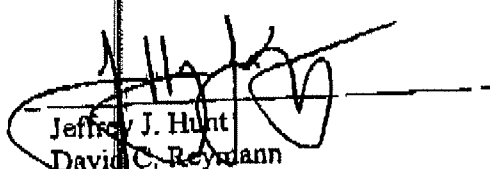
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PARR WADDOUPS LAW

RESPECTFULLY SUBMITTED this 15 day of October 2007.

PARR WADDOUPS BROWN GEE & LOVELESS

By:



Jeffrey J. Hunt
David C. Reymann
Breanne D. Fors

Attorneys for Katie Baker

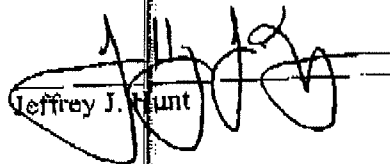
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of October 2007, a true and correct copy of the **RESPONSE TO COURT'S ORDER TO SHOW CAUSE** was served via United States mail, postage prepaid, on the following:

Brock Belnap, Esq.
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**IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

AFFIDAVIT OF KATIE BAKER

No. 061500526

Honorable James L. Shumate

STATE OF UTAH)
) SS
COUNTY OF UTAH)

KATIE BAKER, being first duly sworn, deposes and says:

1. I am a news reporter for the Utah television news station KUTV 2 News and have personal knowledge of all facts set forth herein.

2. I was one of several reporters who traveled to St. George to cover the Warren Jeffs trial.
3. At the time, I had been employed at KUTV as a reporter and/or weekend anchor for approximately ten months.
4. The Warren Jeffs trial was the first high-profile case that I had ever covered.
5. Prior to the Jeffs trial, I had covered fewer than five criminal cases as a news reporter. In none of those cases do I recall any decorum order entered by the Court governing the conduct of news reporters.
6. While en route to St. George to cover the Jeffs trial, I reviewed a copy of the Court's Decorum Order that I had obtained from my station.
7. I did not carefully read every paragraph of the Decorum Order as I should have. I recall that the Order prohibited the use of cell phones in the courtroom and provided for a media pool photographer.
8. I have no recollection of reading Paragraph 3 of the "Guidelines for the Media" portion of the Decorum Order or any other paragraph in the Order governing contact or interviews with prospective jurors.
9. On or about September 10, 2007, I was at the courthouse covering the jury selection process.
10. During the early afternoon of that day, I was standing outside the courthouse when several prospective jurors left the courtroom.

20. I explained to Ms. Volmer that I had mistakenly believed that I could interview Ms. Webb and profusely apologized for my mistake.

21. After learning of the Court's concerns, KUTV immediately removed the story from the station's website.

22. Throughout the day on September 11, 2007, I repeatedly contacted Ms. Volmer and asked if I could personally apologize to the Court for my mistake.

23. During my subsequent coverage of the trial and jury selection, I took extra precautions to ensure that I strictly observed the Decorum Order. For example, I did not even want to film the courthouse for fear of inadvertently filming a prospective juror.

24. Not having heard anything from Ms. Volmer or the Court, and having been permitted to continue coverage of the trial on behalf of KUTV, I believed that the matter had been resolved until I received the Court's Order to Show Cause.

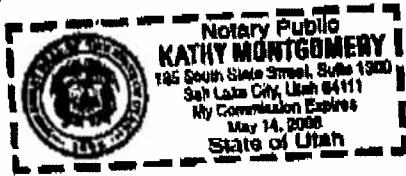
25. In conducting the interview with Ms. Webb, it was not my intent to willfully and knowingly disobey the Court's Decorum Order.

DATED this 15 day of October 2007.


KATIE BAKER

STATE OF UTAH)
)
)
COUNTY OF UTAH)

On this 15th day of October 2007, personally appeared before me Katie Baker, who
duly acknowledged to me that he executed the foregoing instrument.



Kathy Montgomery
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:

5/14/08

10/15/2007 15:07 FAX 801 532 7753

PARR WADDUPS LA

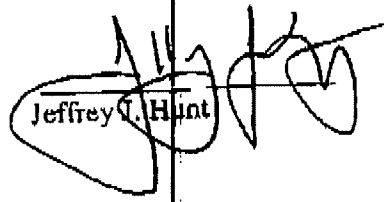
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of October 2007, a true and correct copy of this **AFFIDAVIT OF KATIE BAKER** was served via United States mail, postage prepaid, on the following:

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