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FIFTH JUDICIAL DISTRICT COURT
 WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,
 Plaintiff,

vs.

WARREN STEED JEFFS,
 Defendant.

MEMORANDUM IN SUPPORT OF
 MOTION IN LIMINE REGARDING
 CRIMINAL RESPONSIBILITY FOR
 CONDUCT OF ANOTHER

**FILED UNDER SEAL PER COURT
 ORDER**

Criminal No. 061500526

Judge James L. Shumate

The defendant's criminal liability is based in part on the conduct of another under Utah Code Annotated § 76-2-202. However, it is the defendant's own conduct and mental state that subject him to criminal liability. Hence, evidence regarding whether any other party to the crime has been prosecuted is irrelevant and should not be argued or submitted to the jury.

I. Evidence of Whether Alan Steed Has Been Prosecuted is Irrelevant to Defendant's Culpability and Should not be Argued or Submitted to the Jury

Since the defendant is charged as a party based in part on someone else's conduct, a superficially attractive argument is to suggest that the prosecution is somehow invalid because

the “real” rapist has not been charged. Defendant’s lawyers have made this point in various forms during arguments to the Court as well as in statements to the media. *See Motion Hrg. Trnscr.* 17:6-11 (March 27, 2007) (defense counsel accused the prosecution of ignoring “the actual husband who also allegedly performed the act”); 28:6-11 (defense counsel argued that the “enticement” statute is vague as applied “when combined to the rape as accomplice [statute], where the actor has not been accused....”). Additionally, according to media reports, Jeffs’ “defense lawyers question how prosecutors can charge their client as an accomplice when the groom himself has not been charged with rape.” *Violation or Salvation*, ABA Journal, February 2007, p. 54.

The problem with these arguments is that they are contrary to the law and risk confusing the jury by inviting consideration of factors that do not effect whether the defendant is guilty or not guilty.

Persons who act with the required mental state for an offense are criminally liable as a party whether they directly commit the offense or whether they solicit, command, encourage or intentionally aid another. Utah Code Ann. § 76-2-202 (1953, as amended). The degree of a person’s criminal responsibility is governed by his own mental state—not that of any other party. *See State v. Hansen*, 734 P.2d 421, 429 (Utah 1986) (“while Hansen may be criminally responsible for an act committed by Rocco, the degree of Hansen’s responsibility is determined by his own mental state, not by the mental state of Rocco.”); *State v. Crick*, 675 P.2d 527, 534 (Utah 1983) (“A defendant can be criminally responsible for an act committed by another, but

the *degree of his responsibility* is determined by his own mental state in the acts that subject him to such responsibility, not by the mental state of the actor.”) (emphasis in original).

Because the defendant’s mental state and actions determine whether he is criminally liable, whether Alan Steed has been prosecuted is irrelevant to the jury’s determination of the defendant’s guilt. The Utah Code specifically recognizes this point:

In any prosecution in which an actor’s criminal responsibility is based on the conduct of another, it is no defense:

...
(2) That the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different type or class of offense or is immune from prosecution.

Utah Code Ann. § 76-2-203 (1953, as amended) (emphasis added).

Since the prosecution of Alan Steed is legally irrelevant to the defendant’s criminal culpability, the State requests that the Court:

- 1) Instruct the jury regarding Utah Code Ann. § 76-2-203(2); and
- 2) Prohibit evidence, arguments, or statements that call the jury’s attention to matters that are irrelevant pursuant to Utah Code Ann. § 76-2-203(2)—specifically evidence or argument that the defendant is not guilty because Alan Steed is absent or has not been charged or convicted.

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CONCLUSION

The Court should instruct the jury regarding Utah Code Ann. § 76-2-203(2) and prohibit arguments that ask the jury to consider irrelevant factors in determining whether the defendant is guilty or not guilty.

Respectfully submitted this 9th day of July 2007.


Brock R. Belnap
Washington County Attorney

CERTIFICATE OF DELIVERY

I hereby certify that, on the 9th day of July, 2007, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION IN LIMINE REGARDING CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER to be served as follows:

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