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IN THE FIFTH DISTRICT COURT

WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. WARREN STEED JEFFS, Defendant.	**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE** **Case No. 061500526** **Judge James L. Shumate**

Defendant Warren Steed Jeffs (hereinafter "Jeffs") submits the following memorandum in support of his second motion in limine to exclude certain irrelevant, prejudicial and hearsay statements offered by the State of Utah (hereinafter "Utah").

FACTUAL BACKGROUND

1. Defendant is charged by Amended Information with two counts of Rape under U.C.A. § 76-5-402 and U.C.A. § 76-2-202.

2. The State seeks to introduce an utterance by Jeffs at a church prayer meeting. The utterance is "amen" and is introduced to show Jeffs either affirmed or adopted the statement of the speaker at the church meeting. The church speaker expressed opposition to the government's efforts to regulate or interfere with the marriages of the church's "young people."

ARGUMENT

I. JEFFS' UTTERANCE OF AMEN PURPORTING TO SHOW AGREEMENT WITH ANTIGOVERNMENT RHETORIC AT A CHURCH MEETING IS IRRELEVANT AND THEREFORE INADMISSIBLE UNDER U.R.E. 401

The State seeks to introduce evidence that Jeffs said "amen" at a church service where a speaker made several anti-government statements. In particular, such statements reflected the speaker's objection to perceived government interference in the marriages of younger members of the congregation. Such evidence has no relevance to whether Jeffs committed the charged crimes of accomplice rape.

Under U.R.E. 402 "[a]ll relevant evidence is admissible . . . . Evidence which is not relevant is not admissible." U.R.E. 401 defines relevant evidence as: "Evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

The proposed evidence must relate to a fact "of consequence to the action." U.R.E. 401. What evidence is of "consequence" is determined here by the elements of

the crime with which Jeffs is charged. See *State v. Gulbransen*, 106 P.3d 734, 740 (Utah 2005)(Evidence "relevant in establishing essential elements of the alleged sodomy offenses . . . . ."); *State v. Hobbs*, 64 P.3d 1218, 1224 (Utah Ct. App. 2003)("it was not error for the trial judge to exclude evidence relating to a defense that is no longer available.") and *State v. Jaeger*, 1999 UT 1, ¶ 13, 973 P.2d 404 ("[W]here the proffered evidence has no probative value to a fact at issue, it is irrelevant and inadmissible under rule 402.")

The crux of the complaint is that Jeffs allegedly encouraged non consensual sex. Jeffs utterance of "amen" to the anti-government statement bears no logical relationship to the crime charged. First, the utterance of amen is at best an ambiguous response to the speaker. In *State v. Cookson*, 657 A.2d 1154, 1157 (Me. 1995) the court required a foundation that the declarant "heard and understood [the speaker's] statement, and that he manifested his acquiescence in it . . . ." In reality, the utterance of "amen" at church services is often more of a reflex or a courtesy rather than a conscious adoption of the speaker's statements. To establish the relevance of the evidence the State must show more than the mere utterance of an "amen" at a church meeting.

Second, even assuming Jeffs' conscious adoption of the statements, the antigovernment rhetoric at the church service bears no logical relationship to the charges. The statements in no way encourages non consensual sex among church members. The speaker's (and those purportedly assenting by "amen") abstract and philosophical objection to government policy on marriage among younger church members does render such person's more likely to engage in prohibited conduct. Citizens throughout this State and country object to government policy as expressed

through legislation without engaging in the conduct which is the subject of controversy. Further, reviewing the plain language of the statements, they do not encourage, expressly or impliedly, non consensual sex

II. THE STATEMENT IS INADMISSIBLE UNDER U.R.E. 403

Even if the evidence has some marginal relevance to the case at bar, the Court should still exclude the evidence to avoid prejudice, confusion and waste of time. U.R.E. 403 provides:

> [a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

The Court should exclude the evidence because any minimal probative value of the statements is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. The admission of the statements has minimal probative value, as discussed above in Point I. However, by highlighting FLDS opposition to government policy, the evidence tends to paint FLDS members (including Jeffs) as unlawful. It says little if anything about whether Jeffs committed accomplice rape. Shifting the focus from actual guilt or innocence to dissident political agendas, the State misleads the jury. The focus will become whether Jeffs *is the type of person who would commit rape* versus the proper focus: whether Jeffs actually committed rape.

In *State v. White*, 880 P.2d 18,22 (Utah Ct. App. 1994)(internal citations and quotation omitted) the court explained that "[t]he term 'unfair prejudice' has been interpreted to mean an undue tendency to suggest decision on an improper basis, commonly, though not necessarily an emotional one." Further, exclusion under rule 403

is appropriate where the evidence "may otherwise cause the jury to base its decision on something other than the established propositions of the case." *State v. Lindgren*, 910 P.2d 1268, 1272 (Utah Ct. App. 1996)(internal citations and quotations omitted).

In the instant case, there is a substantial danger that admitting dissenting FLDS political positions the jury will base its decision on something other than the "established propositions of the case." The State should confine its evidence to proving whether Jeffs committed the crime, rather than proving Jeffs holds unpopular political views or is the type of person who would commit such a crime.

III. THE UTTERANCE IS INADMISSIBLE HEARSAY AND IS THEREFORE INADMISSIBLE

Jeffs' utterance of "amen" at a church meeting is hearsay, which is inadmissible under U.R.E. 802. Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." U.R.E. 801(c). The statement which the State seeks to introduce falls well within the definition of hearsay.

The State may argue that the utterance is non-hearsay under U.R.E. 801(d)(2). Under U.R.E. 801(d)(2)(B) a statement is not hearsay if "[t]he statement is offered against a party and is . . . .(B) a statement of which the party has manifested an adoption or belief in its truth." One court noted that "[t]he burden of proof is on the proponent to show that an adoption was intended." *State v. Cookson*, 657 A.2d 1154, 1157 (Me. 1995). A "factual foundation" that the declarant was present, heard, understood and adopted the statement is required for admissibility. Id.

If the State can show the statements are admissible under rules 401, 402 and 403, it still needs to show the requisite foundation. The State cannot make this showing. Repeating the phrase "amen" at a church service is thin thread to hang one's theory of adoption. As a matter of common sense, the declarant's utterance of "amen" at such a service could be for any number of reasons or for any of a number of motives. Where, as here, there is such ambiguity surrounding the statement, it should be rejected as inadmissible hearsay.

CONCLUSION

The Defendant requests that the Court exclude all evidence relating to his purported agreement with a speaker's antigovernment statements as irrelevant, prejudicial and hearsay.

DATED this 28th day of August, 2007.

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By: _____
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CERTIFICATE OF SERVICE

I hereby certify that, on the 28th day of August, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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