

WALTER F. BUGDEN, JR. (480)
 TARA L. ISAACSON (7555)
 BUGDEN & ISAACSON, L.L.C.
 445 East 200 South, Suite 150
 Salt Lake City, UT 84111
 Telephone: (801) 467-1700
 Facsimile: (801) 746-8600

RICHARD A. WRIGHT (Nevada Bar No. 886)
 WRIGHT, JUDD & WINCKLER
 Bank of America Plaza
 300 South Fourth Street, Suite 701
 Las Vegas, NV 89101
 Telephone: (702) 382-4004
 Facsimile: (702) 382-4800

Attorneys for Defendant

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
 TO EXCLUDE ANTICIPATED
 TESTIMONY OF
 RICHARD HOLM**

[FILED UNDER SEAL]

Case No. 061500526

Judge James L. Shumate

INTRODUCTION

The State has indicated, through its discovery materials, that it has interviewed Richard Holm in anticipation of calling him as a potential witness. In an interview with Sergeant Jake Schultz on January 8, 2007, Mr. Holm made various statements

regarding Mr. Jeffs' acquisition of a leadership position in the FLDS church, underage marriages under the leadership of Rulon Jeffs and under the leadership of the Defendant, and out-of-court statements made by Sam Barlow. He also made statements about Mr. Jeffs' role in the marital relations of FLDS couples. Mr. Holm's expected testimony should be excluded from evidence.

ARGUMENT

I. THE ANTICIPATED TESTIMONY OF RICHARD HOLM REGARDING MR. JEFFS' ACQUISITION OF A LEADERSHIP POSITION IS INADMISSIBLE FOR LACK OF RELEVANCE

In his interview with Sergeant Schultz, Richard Holm stated that, after his father had a stroke, the Defendant "began to play a more prominent role... and very quickly 'started managing everything.'" He claimed that an announcement was made "to the public that Warren would be Rulon's spokesperson." Mr. Holm claimed "that after 1998, Warren not only scheduled, but also handled all of the appointments," and that there had been "a clear move by Warren to assume more control," Further, Mr. Holm stated that, once he had more control, the Defendant "immediately began making changes." He claimed that the Defendant "got the people to buy into his changes by 'deferring pressure' from himself," meaning that he "often say, 'Father wants...' or 'The Prophet wants....'" Mr. Holm expressed a dislike for "the direction that Warren was taking the community, but he did not leave because he felt 'trapped.'" None of Mr. Holm's proffered testimony is admissible into evidence.

Evidence is only admissible if it is relevant (Utah Rules of Evidence, Rule 402), meaning that it must have a "tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence," Utah Rules of Evidence, Rule 401. Mr. Holm's statements about the circumstances surrounding Mr. Jeffs' leadership position in the FLDS religion are not probative of any fact of consequence to the present case. Nor is Mr. Holm's clear disdain for "the direction that Warren was taking the community," in any way probative of the complaining witness's marriage and relationship with her husband. Mr. Holm's account of the Defendant taking "a more prominent role," offers no insight into the facts and circumstances of the present case, and is irrelevant. As such, Mr. Holm's expected testimony on these issues should be excluded at trial.

II. THE ANTICIPATED TESTIMONY OF RICHARD HOLM REGARDING THE LEADERSHIP OF RULON JEFFS AND HIS VIEW OF UNDERAGE MARRIAGES IS INADMISSIBLE FOR LACK OF PERSONAL KNOWLEDGE AND LACK OF RELEVANCE.

Mr. Holm told Sergeant Schultz "that underage marriages were not occurring while Rulon was the acting prophet." He further asserted that "Rulon once told him that he did not even want to see a girl until she was eighteen." These statements are all inadmissible, and must be excluded from testimony.

First, a witness testifying at trial "may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Utah Rules of Evidence, Rule 602. Mr. Holm's assertion that no underage marriages were occurring during the leadership of Mr. Jeffs' father is unsupported by any evidence that Mr. Holm has personal knowledge of this. His belief seems to be based only on one comment made to him by Rulon Jeffs (who is now deceased), which is an insufficient foundational basis for Mr. Holm's testimony. Mr. Holm does not and

could not possibly know whether Mr. Jeffs' father conducted underage marriages or allowed them to occur.

Further, whether underage marriages were occurring under the leadership of Mr. Jeffs' father has absolutely no bearing on the present case. The proffered testimony does not make the existence of any consequential fact more or less probable, and is therefore irrelevant. Utah Rules of Evidence, Rule 401. Evidence is only admissible if it is relevant to the present case, this evidence is completely irrelevant as to whether Warren Jeffs was an accomplice to rape. Under Rule 402 of the Utah Rules of Evidence, this testimony should be excluded.

III. THE ANTICIPATED TESTIMONY OF RICHARD HOLM REGARDING THE MR. JEFFS AND ALLEGED INSTANCES OF UNDERAGE MARRIAGES IS INADMISSIBLE FOR LACK OF RELEVANCE, FOR CONSISTING OF IMPROPER CHARACTER EVIDENCE, AND FOR RISK OF UNFAIR PREJUDICE.

Mr. Holm told Sergeant Schultz that the Defendant, once he had assumed a leadership position, "began arranging marriages at young ages." Mr. Holm also stated "that marriages not only involved younger girls, but also changed from a public event to a very private event," and that marriage ceremonies were often conducted "at the Caliente Hot Springs hotel in Caliente, Nevada. This anticipated testimony is inadmissible.

The Defendant in the present case is not charged with conducting illegal, underage marriages. He is charged as an accomplice to rape. Whether he conducted underage marriages does not make any fact of consequence to this case any more or less probable, and Mr. Holm's testimony on this issue is thus irrelevant. Utah Rules of Evidence, Rule 401; Rule 402.

If Mr. Holm's statements have any relevance whatsoever, it is only to establish that Mr. Jeffs' character is such that he was more likely to commit the crime charged. However, the evidence of Mr. Jeffs' past acts or general character is inadmissible for such a purpose. Utah Rules of Evidence, Rule 404(b). Mr. Holm's allegations of Mr. Jeffs' past acts cannot be admitted to prove that the Defendant acted similarly in the present case, and his testimony is inadmissible.

Even if Mr. Holm's testimony is offered for a probative, non-character purpose, it must still be excluded under Rule 403. What little probative value Mr. Holm's testimony may have would be substantially outweighed by the risk of unfairly prejudicing the Defendant. Evidence is "unfairly prejudicial, and therefore inadmissible, 'if it "appeals to the jury's sympathies, arouses a sense of horror, provokes the instinct to punish," or otherwise "may 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) (quoting *Carter v. Hewitt*, 617 F.2d 961, 972-73 (3d Cir. 1980) (citation omitted); *State v. Maurer*, 770 P.2d 981, 984 (Utah 1989)). Testimony that Mr. Jeffs performed other underage marriages would appeal to the jury's sympathies and could arouse in the jury a sense of hostility or the instinct to punish. Accordingly, the expected testimony should be excluded from evidence.

IV. THE ANTICIPATED TESTIMONY OF RICHARD HOLM REGARDING STATEMENTS MADE BY SAM BARLOW IS INADMISSIBLE HEARSAY, IS IRRELEVANT, AND RISKS UNFAIR PREJUDICE.

Mr. Holm told Sergeant Schultz that "Sam Barlow was called by Warren to speak during meetings and update the people on changes in the law." He said that "on many occasions, Sam stated that state legislators were trying to enact laws that would tie the hands of the prophet," and that "Sam told the people that what the prophet wanted done is what needed to be done, no matter what." Mr. Holm also "stated that Sam often mentioned that laws were being passed specifically dealing with underage marriages." Mr. Holm's expected testimony as to Sam Barlow's hearsay statements are inadmissible.

Hearsay evidence is defined as an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Utah Rules of Evidence, Rule 801. There is no question that Sam Barlow's statements were made outside of a courtroom and the suggestion would be that Sam Barlow was speaking on behalf of Warren. Sam Barlow's statements were not made by Mr. Jeffs and remain hearsay. Sam Barlow's alleged statements about following the prophet or discussing laws about underage marriages have no bearing on Mr. Jeffs' culpability in this case. The statements are simply hearsay and should be excluded. Utah Rules of Evidence, Rule 802.

Even if Mr. Holm's account of Sam's statements is offered for some other, non-hearsay purpose, it must nevertheless be excluded from evidence for lacking relevance to the present case. The Defendant is charged as an accomplice to rape, and whether he was aware of laws proscribing underage marriages, and whether he conducted any underage marriages, does not make any fact of consequence to the present case more

or less probable. Utah Rules of Evidence, Rule 401. Since evidence is only admissible if it is relevant, Mr. Holm's testimony about Sam Barlow's statements must be excluded. Utah Rules of Evidence, Rule 402.

Finally, any probative value included in Mr. Holm's testimony would be so limited that it would be substantially outweighed by the risk of unfair prejudice to the Defendant, and the evidence should still be excluded. Utah Rules of Evidence, Rule 403. The allegations in Sam Barlow's statements are inflammatory, and would provoke in the jury the instinct to punish. See *Lindgren*, 910 P.2d at 1272 (quoting *Carter*, 617 F.2d at 972-73 (citation omitted); *Maurer*, 770 P.2d at 984). This risk of prejudice substantially outweighs the probative value, and Mr. Holm's testimony should thus be excluded from evidence.

V. THE ANTICIPATED TESTIMONY OF RICHARD HOLM REGARDING MR. JEFFS' ROLE IN MARITAL RELATIONS IS INADMISSIBLE FOR CONSISTING OF IMPROPER CHARACTER EVIDENCE AND FOR RISK OF UNFAIR PREJUDICE.

Mr. Holm told Sergeant Schultz that the Defendant involved himself in the intimate relationships between husbands and wives, and that "Warren seemed very free to talk about intimate marital relations." He felt that "Warren spoke 'graphic and shockingly' about sexual relations and did so in both priesthood and general meetings." Mr. Holm further claimed that "when his daughter was fourteen she was found to be sexually active and summoned to see Warren," and that "he was very upset when he learned of the detailed and graphic questions that Warren asked her during the interview." He called Mr. Jeffs "intrusive," and he claimed that the Defendant "instructed the priesthood on their sexual relationships with their wives." In addition, he

felt that "every marriage is a triangle, with [Warren] in the middle of it." (alteration in original). Finally, he claimed that Mr. Jeffs "often played on the women's emotions and became more 'sinister' as time went on," and that the Defendant taught his followers that "women were property that belonged to the priesthood and to the prophet." Mr. Holm's testimony as to Mr. Jeffs' involvement in marital relationships consists primarily of hearsay, is not relevant and should not be admitted into evidence. In addition, Mr. Holm appears to have very little personal knowledge about Mr. Jeffs' actual role in members marital relations.

Mr. Holm gave no indication that he knew anything about the nature of Mr. Jeffs' relationship with the complaining witness and her husband. Thus his testimony would only be relevant to suggest that the Defendant has a tendency or propensity to involve himself in the intimate relations of married couples, in order to show that he acted in accordance with that propensity in the circumstances surrounding the present case. Since "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion," Utah Rules of Evidence, Rule 404(a), the expected character evidence is inadmissible.

Even if Mr. Holm's testimony were offered for a proper, non-character purpose, it must still be excluded under Rule 403, because the probative value of Mr. Holm's statements "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Utah Rules of Evidence, Rule 403. Mr. Holm's account of the Defendant speaking graphically about sex in meetings and with Mr. Holm's fourteen year old daughter, along with Mr. Holm's characterization of the Defendant as "sinister," and as someone who believed that women were property, is

inflammatory and provocative, and risks arousing in the jury a sense of horror or an instinct to punish, and is thus unfairly prejudicial. See *Lindgren*, 910 P.2d at 1272 (quoting *Carter*, 617 F.2d at 972-73 (citation omitted); *Maurer*, 770 P.2d at 984). On the other hand, Mr. Holm provided little insight into the facts and circumstances of the present case. The probative value of his testimony would be far too insignificant to avoid being substantially outweighed by the risk of unfair prejudice, and Mr. Holm's testimony must be excluded from evidence.

CONCLUSION

Richard Holm's often includes speculation of facts to which he lacks personal knowledge, lacks relevance to the present case, includes improper character propensity evidence and inadmissible hearsay evidence, and creates a risk of unfair prejudice against Mr. Jeffs that substantially outweighs any probative value his statements might otherwise have. Accordingly, his testimony should be excluded from evidence.

DATED this 17th day of July, 2007.

BUGDEN & ISAACSON, L.L.C.

By: 

WALTER F. BUGDEN, JR.
TARA L. ISAACSON

WRIGHT, JUDD & WINCKLER
RICHARD A. WRIGHT

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on the 9 day of July, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap
Washington County Attorney
178 North 200 East
St. George, UT 84770

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE:

Craig L. Barlow
Assistant Attorney General
5272 South College Drive, #200
Murray, UT 84123

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE:

David C. Reymann
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, UT 84111-1537
Attorneys for Media Intervenors

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE:

