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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF COCONINO

11 STATE OF ARIZONA,

No.: CR2015-00862

12 Plaintiff,

MOTION TO RECONSIDER ORDER FOR

13 vs.

DEPOSITION

14 STEVEN EDWARD JONES,

(Hon. Dan Slayton – Div. 2)

15 Defendant.

16 COMES NOW Warren Jones, by Matthew Schwartzstein, counsel and hereby moves
17 this court to reconsider its' previous order of January 4, 2017, requiring Mr. Jones to appear at
18 a deposition on January 18, 2017 at the Coconino County Attorney's Office.

19 I. FACTS

20 Warren Jones' son Steven is the defendant in a high-profile murder prosecution in
21 Coconino County. During Steven's interview after arrest, he had mentioned receiving training
22 for the handling of firearms from his father, a licensed NRA instructor. The state, in their
23 motion, seeks to depose Mr. Warren Jones about the training he gave his son, calling this line
24 of questioning "relevant inquiries." DCA Barker states in his motion that he requested an
25 interview with Mr. Jones and the latter had refused. This is untrue. Mr. Jones has never
received any request from the state to be interviewed. To the contrary it appears Mr. Barker
inquired about an interview to Steven Jones' attorneys, who were dubious that he would
consent to an interview. As the court is aware, neither Mr. McCowan or Mr. Davidson

1 represented Warren Jones at any time, and they were not authorized to speak on his behalf.

2 A conference was held in this division. It is unclear to the undersigned whether this
3 was on the record as no minute entry has been published to counsel's knowledge. It is
4 apparent from a brief discussion with Mr. McCowan that the court had doubts as to whether he,
5 as attorney for Steven Jones, had any standing to take part in the hearing. The undersigned
6 takes no position on that issue.

7 It does appear that the court granted the County Attorney's request, as on or about
8 January 12, 2017 a copy of an order granted such relief was given to Warren Jones at his home.
9 No subpoena was ever served on Mr. Jones, however.

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12 **II. ARGUMENT**

13 **A. Granting a deposition was premature, and the requisite findings were not**
14 **established by the state.**

15 **1). Warren Jones is neither material or relevant to the investigation of**
16 **the offense, or more broadly to the case in general.**

17 DCA Barker rightly points to the pertinent parts of Rule 15.3(a)(2), which governs
18 depositions in criminal matters, namely that it must be established that 1) the person's
19 testimony is either material to the case or to investigate the offense, and that 2) the person will
20 not cooperate in granting a personal interview. Regarding that first prong, it is our view that
21 these requirements have not been established, and an interview of Warren Jones is neither
22 relevant nor material. While Mr. Jones can understand the parties wanting all information
23 possible, he cannot fathom what relevance this line of inquiry could have toward the
24 prosecution of his son.
25

1 What is relevant is the facts: what the complaining witnesses did in this matter (i.e.
2 chase the defendant and others for the purposes of assaulting them), and what Steven Jones did
3 in response. Whether his actions are appropriate are solely up to the jury to decide. Delving
4 into his training, and interviewing his father, who is purported to be the only one to give him
5 this training, is beyond the scope of any normal inquiry. Warren Jones was not a witness to the
6 events and the undersigned takes the position that the only inquiry is whether Steven acted
7 correctly, not whether he was correctly trained. The rightness or wrongness of Steven's
8 actions naturally will be determined by his actions. Should the state wish to challenge those
9 actions they are free to bring their own experts to discuss these matters, subject of course to
10 limitations mandated in Rule 704(b).
11

12 In short, it is not the training, but the implementation or interpretation of said training,
13 that is material to this case. This is to be gleaned from the facts as established by actual
14 witnesses to the offense. It should be noted that at no time did this materiality seem to reveal
15 itself in the past one and one-half years, as Warren Jones was never interviewed by police
16 contemporaneous to the incident, nor is he currently noticed as a potential witness for either the
17 state or the defense.
18

19 **2) It was never established that Warren Jones would not cooperate in**
20 **granting an interview.**
21

22 In the state's motion, they assert that they "requested an interview with Warren Jones.
23 Mr. Jones has refused to submit to an interview voluntarily." At no time has Warren Jones
24 spoken to any employee of the Coconino County Attorney's Office regarding an interview.
25 Further, Mr. Jones never received any correspondence from the County Attorney requesting an

1 interview, whether oral, written or otherwise. It is counsel's belief that Mr. Barker's statement
2 was based on a conversation he had with Mr's. McCowan and Davidson, who as stated before
3 do not represent Warren Jones. Naturally, the correct procedure was for Mr. Barker's office to
4 contact Mr. Jones directly. As noted before, he was not a witness listed by the defense, which
5 makes it all the more confusing as to why Mr. Barker would seek an interview through them,
6 family relations notwithstanding.

7 The second prong in Rule 15.3, therefore, fails.

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10 **B. Mr. Jones was never served with a subpoena, and the order is an**
11 **insufficient substitute.**

12 Rule 15.3(c) states with clarity: "The moving party shall notice the deposition in the
13 manner provided for in civil actions and serve a subpoena upon the deponent, specifying the
14 terms and conditions set forth in the court's order granting the deposition, and give notice of
15 the deposition in writing to every other party to the action." This rule references the Rules of
16 Civil Procedure for the form of subpoenas, which is Rule 45. Rule 45 states:

17 **(a) Generally.**

18 (1) *Requirements--Generally.* Every subpoena must:

- 19 (A) state the name of the Arizona court from which it issued;
20 (B) state the title of the action, the name of the court in which it is pending,
21 and its civil action number;
22 (C) command each person to whom it is directed to do the following at a
23 specified time and place:
24 (i) attend and testify at a deposition, hearing, or trial;
25 (ii) produce and permit inspection, copying, testing, or sampling of
designated documents, electronically stored information, or
tangible things in that person's possession, custody, or control; or
(iii) permit the inspection of premises; and
(D) be substantially in the form set forth in Rule 84, Form 9.

In short, a subpoena must be issued, it must comport with Rule 45, and essentially look

1 like the subpoena's issued on all cases. Despite these rules, the state chose to deliver a copy of
2 the court's order. Mr. Jones is confused to the validity of this order for two reasons. First, it
3 does not comply with the statute, *supra*, although admittedly it does give the date, time and
4 location of the deposition. It does not seem to command Mr. Jones do anything. To the
5 contrary, based on the rules, the Court's order grants the state leave to serve a subpoena,
6 nothing more. Second, the order had the name of the David Rozema, rather than Bill Ring.
7 This further confused the validity of the order in Mr. Jones' eyes. Based on the above, the
8 deliverance of a court order fails both procedurally and substantively to give appropriate
9 notice.
10

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12 **C. The Court's Order, Granting Deposition, is in Violation of Rule**
13 **45(b)(3)(B).**

14 Rule 45(b)(3):

15 (3) *Place of Appearance.*

- 16 (B) Deposition or Hearing Subpoena. A subpoena commanding a person who is
17 neither a party nor a party's officer to attend a deposition or **hearing may not**
18 **require the subpoenaed person to travel to a place other than:**
19 (i) the county where the person resides or transacts business in person;
20 (ii) the county where the person is served with a subpoena, or within 40
21 miles from the place of service; or
22 (iii) such other convenient place fixed by a court order.

23 Emphasis added. Warren Jones lives in Glendale, Maricopa County, Arizona,
24 approximately 140 miles away from the Coconino County Attorney's Office. Rule 45(b)(3)(B)
25 is clear in its limitations on where non-parties can be deposed, and forcing Mr. Jones to leave
Maricopa County and travel in excess of forty miles is contrary to the statute. Further, such a
location is not convenient to Mr. Jones in any interpretation of the word. To the contrary, it

1 presents a significant burden, as Mr. Jones is retired and his wife has bad knees, requiring him
2 to be near the home to assist her when needed.
3

4 **D. The County Attorney's Office Is On a Fishing Expedition**

5 Considering Mr. Jones is the father of the defendant, that he was never previously
6 noticed as a witness to the case, was never approached by the state for an interview, and was
7 never approached by the officer's investigating his son's case, the undersigned submits that the
8 State's pursuit of a deposition is an act of desperation. Taking the exceptional route of
9 deposing a defendant's father reeks of the prosecutor grasping for any information that might
10 be distorted into their version of what really happened that day at Northern Arizona University.
11 Counsel believes their inquiry will not be limited to firearms training, but seeking out any and
12 all possible statements made by the defendant to his father regarding the case. The fact that
13 Warren Jones took his son out shooting with he was a child has no bearing in this murder trial,
14 and there is nothing to suggest invading Mr. Jones liberties will alter the outcome of this case
15 in any event.
16

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18 **E. Conclusion**

19 Based on the foregoing, Warren Jones respectfully requests this court reverse itself, and
20 deny the state's motion for deposition.
21

22 RESPECTFULLY SUBMITTED this 13th day of January, 2017.

23 THE LAW OFFICE OF
24 MATTHEW SCHWARTZSTEIN, PLLC

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By: Matthew Schwartzstein
Attorney for Defendant

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1 **Original** of the foregoing Mailed this 13th day of
2 January, 2017, to:

3 Clerk of the Coconino County Superior Court
4 200 N. San Francisco Street
5 Flagstaff, AZ 86001

6 **Copies** of the forgoing mailed, emailed and/or faxed this
7 13th day of January, 2017, to:

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