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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	**CASE NO. V1300CR201080049** Hon. Warren Darrow DIVISION PTB **DEFENDANT JAMES ARTHUR RAY'S RESPONSE TO STATE'S MOTION IN LIMINE RE: WITNESS RICK ROSS**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By highlighting Rick Ross's criminal history and violent and unlawful "professional" practices, the State's motion *in limine* forcefully underscores the reasons Ross should be excluded as an expert witness. *See* Defendant's *Motion in Limine* No. 9 to Exclude Testimony of Rick Ross (filed Jan. 24, 2011). As the Defense has noted, the State's attempt to call Ross as an expert on the psychological effects of self-help seminars threatens this trial's integrity. Ross is strikingly unqualified to offer expert testimony; he lacks education or training in any mental health field, has a history of lawbreaking, and is a self-proclaimed "activist" with a highly controversial agenda. Moreover, Ross's inflammatory "conclusions" lack any connection to the evidence in this case.

If this Court denies Mr. Ray's motion and permits Ross to testify as an expert, the Constitution's Sixth Amendment and Due Process Clause require the Court to allow Mr. Ray full and complete cross-examination regarding Ross's qualifications, conclusions, and credibility. "The right of confrontation, which includes the right to cross-examine witnesses, is a fundamental right." *State v. Correll*, 148 Ariz. 468, 473 (Ariz. 1986) (citing and quoting *Pointer v. Texas*, 380 U.S. 400, 403–04 (1965)). Moreover, years of Arizona case law emphasize that "[t]rial courts must give great latitude for full and complete cross-examination of expert witnesses." *Gasiorowski v. Hose*, 182 Ariz. 376, 381 (App. 1995).

A complete cross-examination here includes the categories the State seeks to cordon off: Ross's dubious and unlawful professional activities and his criminal history. These facts bear on Ross's qualifications as an expert, the reliability of his opinions, and the bias of his testimony. The State cannot restrict cross-examination into these vital matters simply because some of these facts—*all* of which are admitted on Ross's own website—are inconvenient or embarrassing. "The State could . . . protec[t]" Ross "from exposure" of this information in court "by refraining from using him to make out its case." *Davis v. Alaska*, 415 U.S. 308, 320 (1974). But "the State cannot, consistent with the right of confrontation," require Mr. Ray to forego questioning that will

allow the jury to "appropriately draw inferences relating to the reliability of" Mr. Ross and his purported expert opinions. *Id.* The State's motion must be denied.

II. ARGUMENT

"'Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Clark v. Arizona*, 548 U.S. 735, 789–90 (2006) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324, (2006)). In particular, the Constitution's Sixth Amendment guarantees defendants the right to confront witnesses against them through cross-examination, which is 'one of the safeguards essential to a fair trial.'" *Pointer v. Texas*, 380 U.S. 400, 404 (1965). The cross-examination right includes the ability to "revea[l] possible biases, prejudices, or ulterior motives of the witness." *Davis*, 415 U.S. at 316. And because the right to complete cross-examination of adverse witnesses is "so vital a constitutional right," *id.* at 320, it is reversible error for a trial court to bar a defendant from "expos[ing] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." *Id.* at 318.

The need for fulsome confrontation is increased where expert witnesses are concerned. Arizona law recognizes the need for trial courts to give particularly "great latitude for full and complete" cross-examination and impeachment of expert witnesses. *Hose*, 182 Ariz. at 381; *Youngblood v. Austin*, 102 Ariz. 74, 77 (1967) ("[W]ide latitude is permitted in the cross-examination of a witness, and the courts are particularly liberal in allowing full and complete examination of an expert witness." (quoting *Brazee v. Morris*, 65 Ariz. 291 (1947)). Indeed, "Arizona has a long-favored practice of allowing full cross-examination of expert witnesses, including inquiry about the expert's sources, relations with the hiring party and counsel, possible bias, and prior opinions." *E.g.*, *Arizona Independent Redistricting Com'n v. Fields*, 206 Ariz. 130, 143 (App. 2003). A defendant confronting an adverse expert witness must be permitted to explore comprehensively the witness's "qualifications as an expert," the validity of his conclusions, and the nature and extent of his expertise. *See Hose*, 182 Ariz. at 381, 382. Of

grave import here, it is reversible error to permit a party to "present a one-sided version" of an expert's "qualifications and expertise." *Id.* at 382.

A. Mr. Ray is entitled to explore Ross's qualifications and reliability as an expert, including his professional practices and criminal history.

Mr. Ray's constitutional right to fully explore Ross's qualifications and the reliability of his expert conclusions includes the right to inform the jury of Ross's extreme professional practices and criminal history. Ross, it bears emphasis, is a self-proclaimed "exper[t] offering analysis in destructive cults, controversial groups and movements." Ross Expert Witness Report at 2. The State seeks to introduce his testimony to "educate" the jury on various nebulous concepts that Ross asserts are grounded in psychology. As explained in the Defense Motion *in Limine* to exclude Ross from trial, there are several deeply troubling defects in this attempt. Ross's alleged field of expertise is itself highly questionable; in the Defense interview or Ross, he was not able to provide academically accepted definitions of the apparent terms of art he uses. *See* Defendant's Motion in Limine at 4. To the extent such a field exists, Ross is strikingly unqualified to provide "expert" opinions in it; he has no formal education or any specialized training of any kind in his purported field. Indeed, despite the fact that the State has sought to designate Ross as an expert in neuro-lingustic programming, he admitted during his interview that he was not an expert on the topic. *See* Defendant's Motion in Limine at 1, 8, 9. And the "work" Ross does engage in—archiving internet posts, labeling as cults a wide range of religious groups, and, most notably here, *forcibly detaining and "deprogramming" alleged cult members*—is reflective of an activist with a controversial agenda, not an expert witness. Should the Court admit his testimony despite his utter lack of qualifications, it must allow the jury to receive sufficient information about Ross' bias and criminal record to evaluate his credibility. *Logerquist v. McVey*, 196 Ariz. 470, 488 (Ariz. 2000) ("It is the jury's function to determine accuracy, weight, or credibility.").

1. Mr. Ross is entitled to cross-examination regarding Ross's continued practice of forcible cult deprogramming.

The State first seeks to preclude evidence and inquiry regarding "Mr. Ross's practices regarding cult deprogramming." State's Motion at 4. This effort must fail.

a. Ross's continued practice of forcible "cult deprogramming" is directly relevant to his qualifications as an expert and the bias of his testimony.

Ross's violent deprogramming activities are squarely and directly relevant to his qualifications as an expert and to the bias of his testimony. In order for the jury to understand what Ross does—and whether his opinions warrant their acceptance—the jury must know what it means to be an "expert" in "cult deprogramming, controversial groups and movements." *See generally Logerquist*, 196 Ariz. at 488 (jury is ultimate arbiter of the weight and credibility of expert witness testimony). This is particularly vital where the witness's "field" is not one with which most jurors are familiar. The Defense is entitled to ask questions that permit the jury to understand the basis for Ross's beliefs, the nature of his work, and the types of tactics he employs.

The record to date shows that Ross's practice of abducting unconsenting individuals and attempting to force them to renounce their religious or personal beliefs is an integral part of his "work" and his qualification as an expert. Indeed, Ross's CV does *not* identify him as an expert in "LGAT"—the topic to which the State now seeks to limit cross-examination—and he has not been qualified as such by any court of law. His internet postings and the speaking engagements he identifies in his CV pertain to cults, not "LGAT." And the opinions he has disclosed regarding so-called LGATs derive from his opinions regarding cults. *See* Transcript of Interview of Rick Ross, 1/21/11, at 32:26–33:2, 36:22–23 (stating, regarding LGATs, that "you look at whether" a group exhibits the same criteria that "define a destructive cult"). The State is not permitted to excise one speck of Ross's purported knowledge for presentation to the jury, and cordon off the full picture of his "work" from the jury's view. Precluding inquiry into Mr. Ross's alarming professional tactics and the tools of his trade—which include handcuffs and duct tape—would

violate Mr. Ray's rights by permitting the State "to present a one-sided version of" Ross's "qualifications and expertise." *Hose*, 182 Ariz. at 381.

In addition, Ross's "work" as a forcible cult deprogrammer reveals his bias as a witness, which serves as an independent basis for relevance. *See Davis*, 415 U.S. at 316 ("The partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony.'" (quoting 3A J. Wigmore, Evidence s 940 p.775 (Chadbourn rev. 1970)). *See also id.* at 320 (holding that "effective cross-examination for bias of an adverse witness" is "so vital a constitutional right" that it outweighs "[t]he State's policy interest in protecting the confidentiality of a juvenile offenders record"). Ross is a self-proclaimed "activist." *See, e.g.*, Cult Deprogramming: An Examination of the Intervention Process, Dec. 20, 2010 (article posted on Ross's cult news website and listed in his expert witness report) ("I then became an anti-cult community activist and organizer"). He devotes his time to aggressively seeking to eliminate the sway of cults and "controversial groups," terms he defines extremely inclusively (including, for example, Mormons, Chabad, and Jehovah's Witnesses). Moreover, Ross actively seeks media coverage of his sensational opinions; most of his CV is devoted to his appearances on television or in print. In view of these facts, the jury may well conclude that Ross's opinions in this case are not those of a dispassionate observer. Mr. Ray must be able to expose to the jury the context of—and potential bias underlying—Ross's opinions.

b. The State has identified no legally valid reason for excluding evidence of Ross's continued practice of forcible cult deprogramming.

Without even *mentioning* the Confrontation Clause, the State asserts that the Defense must not inquire on cross-examination into "Mr. Ross's practices regarding cult deprogramming" because (1) "the State does not intend to call Mr. Ross as an expert on cult deprogramming"; because (2) exposure of Ross's practices will cause unfair prejudice to the State's case; because (3) the practices are too remote in time to be relevant; and because (4) impeachment on collateral matters is prohibited. All four arguments are misplaced.

First, Arizona law does not restrict cross-examination to matters addressed in direct examination. Rather, cross-examination is permitted on *any* relevant subject. *See Hose*, 182 Ariz. at 376; Ariz. R. Evid. 611 ("A witness may be cross-examined on any relevant matter."). As set forth above, Ross's forcible deprogrammings are directly relevant to his qualifications and bias. Accordingly, the State's second argument also fails; there is no *unfair* prejudice here, and the probative value of the information would easily outweigh any such prejudice. *See Hose*, 182 Ariz. at 381 (a party's "right to prove and challenge . . . expert testimony" receives "particular weight" in the 403 balancing analysis); *Davis*, 415 U.S. at 320 (a State can protect a witness from unwanted exposure of information by refraining from using the witness to make out its case). Third, Ross's deprogramming practices are hardly remote. The State's assertion that Mr. Ross "has not engaged in any activities involving the forcible detention and deprogramming of adult cult members since 1990," State's Motion at 2, omits that Ross was still litigating the civil judgment against him in the Jason Scott case as recently as 1997. *See* Defendant's Motion *in Limine* No. 9, at 3; *see also Scott v. Ross*, 120 F.3d 1275 (9th Cir. 1998). In addition, as the State acknowledges, Ross "*still* occasionally does" forcible deprogrammings "with juvenile cult members." State's Motion at 2 (emphasis added). Do such forcible deprogrammings also involve abducting people, handcuffing them, taping their mouths shut and spiriting them off to hidden locations? If so, the jury should be permitted to evaluate whether such practices are consistent with a dispassionate expert or a zealot.

Fourth, the State's assertion that "impeachment on collateral issues is not allowed," State's Motion at 5, is correct but irrelevant here. Mr. Ray is not attempting to impeach Ross on a collateral matter. "Evidence is collateral if it could not properly be offered for any purpose independent of the contradiction." *State v. Hill*, 174 Ariz. 313, 325 (1993). The bias and prejudice of a witness is never a collateral matter. *See, e.g., Davis*, 415 U.S. at 316. As the Arizona courts have explained, "[a]n effort to impeach on a collateral matter differs significantly from an effort to affirmatively prove motive or bias. Rule 608(b) restricts the former; the sixth amendment protects the latter." *State v. Gertz*, 186 Ariz. 38, 42 (1996).

2. Ross's felony conviction bears on his qualifications as an expert.

Ross was convicted of conspiracy to commit grand theft—embezzlement from a jewelry store—in 1976. This felony conviction, like his deprogramming practices, bears on his expert qualifications. Mr. Ray is entitled to present to the jury a full and fair view of Ross's controversial career. Jurors should be permitted to know, among other facts, that Ross is not an expert who has followed a traditional path of scholarship. To the contrary, although the State will ask Ross to opine on apparently technical concepts and psychological phenomena, Ross has no higher education or specialized training whatsoever. Rather than attending college, Ross spent time as a small-time criminal and jewel thief, and became an "expert" apparently by his own say-so. From information about Ross's professional and criminal history—and the intersection of the two—the jurors, "as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of" Ross and his opinions. *Davis*, 415 U.S. at 318.

To be sure, courts sometimes exclude evidence of felony convictions, particularly "stale" convictions, where the information is more prejudicial than probative. But "[w]here the witness is a non-defendant, the trial court must not only consider the provisions of Rule 609(a) but must also consider the rights of a defendant to confront the witnesses against him." *State v. Conroy*, 131 Ariz. 528, 530 (App. 1982) (holding that it was reversible error for the trial court to exclude evidence of witness's prior felony conviction, where the defense theory was that witness was not credible; witness's rape conviction was germane to his credibility). Moreover, it bears repeating, Ross is being presented as an *expert* witness, and his criminal history affects whether the jury will conclude that Ross's purported "field" of expertise is legitimate, and whether his specific conclusions are reliable. *See Hose*, 182 Ariz. at 382.

The State asserts that "the extraordinary rehabilitation demonstrated by Mr. Ross indicates there is no probative value whatsoever" to his felony conviction. State's Motion at 3. The State is free to make that argument at trial. But the question whether Ross's conduct reflects rehabilitation (a dubious characterization at best), and the weight to be given to his behavior, are

for the jury to decide. The State is not permitted, by stroke of the pen, to bar the Defense from asking critical questions about a highly controversial and inflammatory witness.

B. Ross's felony conviction is also admissible under Rule 609.

In addition to its relevance to Ross's expert qualifications, Ross's felony conviction is admissible for general impeachment purposes pursuant to Rule 609. By separate filing on this date, the Defense has provided notice of intent to introduce the felony conviction into evidence. Although Ross's conviction is well more than 10 years old, the conviction is more probative than prejudicial because it reflects a crime of dishonesty (embezzlement), and because Ross is an expert witness, regarding whom Mr. Ray is constitutionally entitled to pursue a full and complete cross-examination.[1] *See Conroy*, 131 Ariz. at 530.

III. CONCLUSION

"There are few subjects" upon which [the Supreme] Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." *Pointer*, 380 U.S. at 405. Those bedrock constitutional principles bar the State's motion. Mr. Ray is entitled to elicit for the jury the full extent—or lack thereof—of Ross's qualifications and reliability, including his forcible "deprogramming" practices and his criminal history.

[1] The State's motion suggests that the Defense notice is untimely. That suggestion is misplaced. The Defense received the State's confirmation of disclosure regarding the felony convictions of its witnesses on February 2, 2011, and filed the Rule 609 notice immediately thereafter. Furthermore, the notice requirement of Rule 609(b) exists to avoid surprise, and the State's motion *in limine*—specifically raising the issue of the criminal conviction of *its own witness*—makes obvious that the State is subject to no surprise here.

DATED: February 3rd 2011

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