FILED
11:06 O'Clock A.M.
FEB 28 2011
JEANNE HICKS, Clerk
By: Rita Storms

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: February 28, 2011

TITLE:	COUNSEL:
STATE OF ARIZONA	Sheila Sullivan Polk Yavapai County Attorney Bill Hughes, Esq. Steven Sisneros, Esq. Deputy Yavapai County Attorneys
(Plaintiff)	(For Plaintiff)
vs.	
JAMES ARTHUR RAY	Thomas K. Kelly, Esq. 425 E. Gurley Prescott, AZ 86301 Luis Li, Esq. Brad Brian, Esq. Truc Do, Attorney at Law Miriam Seifter, Attorney at Law MUNGER TOLLES & OLSON LLP 355 S. Grand Avenue, 35th Fl. Los Angeles, CA 90071
(Defendant)	(For Defendant)

RULING ON DEFENDANT'S MOTION IN LIMINE (NO. 9)
TO EXCLUDE THE TESTIMONY OF RICK ROSS

The Court has considered the State's motion, the response, and the reply. The parties have not requested oral argument.

The State intends to introduce, through the testimony of Mr. Rick Ross, what it maintains would be expert testimony in the field of "persuasive techniques." This testimony would be offered for the purpose of assisting the jury in understanding why the alleged victims remained in the sweat lodge despite serious physical distress or other conditions. According to the State, this testimony would be relevant to the issue of causation and would help "complete the story." Based on the information disclosed to the Court, including the excerpts from the audio recording of the 2009 Spiritual Warrior Seminar, the Court concludes that a properly qualified expert of the type proposed by the State could arguably be of assistance to the jury in understanding the fact of causation.

The Defendant argues in his reply that the State's legal theory is unprecedented and runs counter to the "most basic principles of criminal liability, human agency, and actual and proximate causation." According to the Defendant, acceptance of the State's theory would improperly allow a conviction to be based on "mere words" of encouragement and would violate the principle that the free will of the victim constitutes an intervening cause that would eliminate proximate cause. The discussion and dicta contained in the case cited in support of the State's intervening cause argument, however, seem to support the State's position, the position that criminal liability can be based on a Defendant's role in influencing the conduct of a victim, notwithstanding a victim's free will. *Lewis v. State*, 474 So.2d 766, 771 (Ala. App.1985).

Questions remain concerning whether Mr. Ross is a properly qualified expert under Rule 702, Ariz.R.Evid., and *Logerquist v. McVey*, 196 Ariz. 470, 1 P.3d 113 (2000) and whether his testimony must meet the standard for admissibility set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir.1923). The parties have not presented their positions on the applicable standard for determining admissibility and have not requested a pretrial hearing on these questions.

The Court concludes that the testimony of Mr. Ross may be admissible, subject to the requirement of providing appropriate foundation as to both his qualifications as an expert and the basis for his opinions.

DATED this 28th day of February, 2011.

Warren R. Darrow
Superior Court Judge

cc: Victim Services Division