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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2010 JUL -7 AM 10: 24
DEANNE HICKS, CLERK
BY: B. Chamberlain

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	CASE NO. ~~VCR1300CR201080049~~ V1300CR201080049 Hon. Warren R. Darrow **DEFENDANT'S MOTION *IN LIMINE* (NO. 2) TO EXCLUDE EVIDENCE OF DEFENDANT'S FINANCIAL CONDITION AND BUSINESS PRACTICES PURSUANT TO ARIZ. R. EVID. 403 AND 404**

TO THE HONORABLE WARREN R. DARROW AND SHEILA POLK, YAVAPAI COUNTY ATTORNEY:

PLEASE TAKE NOTICE that, on July 20, 2010, or as soon thereafter as the matter may be heard in the Superior Court of Arizona in and for the County of Yavapai, Defendant James Arthur Ray, by and through his attorneys of record, will move to exclude evidence or references to his alleged financial condition or business practices as irrelevant and inadmissible pursuant to Arizona Rules of Evidence 403 and 404. This motion is based on the attached Memorandum of Points and Authorities, the Declaration of Truc T. Do in Support of Defendant's Motions *in Limine* filed concurrently herewith, the files and records in this case, and any argument and evidence adduced at the hearing on this matter.

DATED: July 6, 2010

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

"A defendant is entitled to have the government prove that he committed the crime charged, as opposed to proving that he is a bad person who should be convicted regardless of whether he committed the crime charged." *United States v. Harris*, 185 F.3d 999, 1004 (9th Cir. 1999). The State seeks to circumvent that fundamental rule by introducing evidence regarding (i) the "financial wealth" of Mr. Ray and his company, James Ray International ("JRI"); and (ii) Mr. Ray's "business practices" and "sales techniques." Declaration of Truc T. Do in Support of Motions *in Limine* ("Do Decl.") ¶ 10, Exhibit 4. Evidence of this sort has no conceivable relevance to the charged crimes of reckless manslaughter. By piecing together snippets of information from entirely different contexts, the State is transparently attempting to depict Mr. Ray as an unscrupulous businessman who profited from his personal development coaching. In turn, the State seeks to convey to the jury that if Mr. Ray somehow conducted his business in a manner the jury disapproves of, albeit not in ways that have any bearing on manslaughter charges, they should convict. But that is the precise use of evidence that Arizona Rules of Evidence 404 and 403 prohibit. The Court should view the State's thinly veiled attempt to bias the jury against Mr. Ray for what it is, and exclude this irrelevant and prejudicial character evidence.

II. ARGUMENT AND AUTHORITIES

The State has sought, and the defense has voluntarily provided for the purposes of a bail reduction, extensive information regarding Mr. Ray's financial resources: his income, his assets, and the financial position of JRI. This evidence, and any information regarding Mr. Ray's business practices and sales techniques, must be excluded at trial. It is affirmatively barred by Rule 404's character-evidence prohibition; it is irrelevant under Rule 401; and in all events, it is far more prejudicial than probative under Rule 403.

A. The Evidence the State Seeks to Introduce is Barred by Rule 404.

Attempting to divert attention from the weakness of its case, the State seeks to initiate a referendum on Mr. Ray's character by introducing evidence of Mr. Ray's financial

worth and business practices. The State apparently intends to inform the jury that Mr. Ray and JRI enjoy substantial financial wealth, and that some witnesses stated that they disliked Mr. Ray's sales tactics. For instance, former JRI employee Hope Miller stated that, in her view, Mr. Ray used "brainwashing" tactics to entice people to make irresponsible or impulsive spending decisions to register for future JRI events. Do Decl. ¶ 11, Exhibit 10. At trial, the State intends to elicit testimony regarding this and similar alleged behavior. Do Decl. ¶ 10, Exhibit 4.

This is quintessential character evidence. Such evidence, Arizona courts have explained,

> "tends to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened."

Bell v. State, 143 Ariz. 305, 308–09 (Ct. App. 1984) (quoting Rule 404, advisory committee note). Indeed, Mr. Ray has already endured vitriolic attacks on his character in media reports and public responses, incited by the State's release of the very information it now seeks to introduce at trial. Based on such alleged information, Mr. Ray has been vilified by media reports and members of the public as a "charlatan," "snake oil salesman," "a huckster," and an egomaniac who played "God." *See* Defendant's Motion to Change Place of Trial at 5:6-6:20, filed on June 29, 2010. Arizona's rules of evidence affirmatively prohibit this sort of mud-slinging sideshow *in a court of law*. The State must try Mr. Ray on the charges in the indictment alone.

B. <u>The Evidence is Irrelevant.</u>

When prohibited character inferences are stripped away, it is plain that the financial and business practices evidence the State seeks to introduce has no role to play in this case.[1] It is irrelevant and therefore inadmissible. Evidence is relevant only if it has a "tendency

[1] The State has agreed that Ariz. R. Crim. P. 19.1(b) mandates bifurcation of all aggravating factors, including its allegation that Mr. Ray committed the charged offenses "as consideration for the receipt, or in the expectation of the receipt, of [something] of pecuniary value" pursuant to Ariz. Rev. Stat. § 13-701(D)(6). Do Decl. ¶ 12, Exhibits 2 and 4. Rule 19.1(b) provides that: "In all prosecutions in which ... a non-capital sentencing allegation required to be found by a jury is alleged, ***<u>unless such ... allegation is an element of the crime charged</u>***, ... [t]he trial shall proceed initially as though the sentencing allegations were not alleged. When the indictment,

to make the existence of any fact that is of consequence more or less probable than it would be without the evidence" *State v. Oliver*, 158 Ariz. 22, 28 (1998) (citing Ariz. R. Evid. 401). Here, Mr. Ray's status as a prince or a pauper, a determined or restrained salesman, patently has no such tendency with respect to the charges of manslaughter.

First, the situations in which a party's wealth is relevant and admissible are few and far between. Most often, such evidence is admissible in civil cases in which the plaintiff seeks punitive damages. *See, e.g.*, *EEOC v. Autozone, Inc.*, 2009 WL 86714, at *1 (D. Ariz. Jan. 13, 2009). In a criminal case, its relevance is especially rare. It might be relevant to establish that the defendant made a business out of selling contraband. *See, e.g.*, *State v. Pereida*, 170 Ariz. 450, 452-53 (Ct. App. 1992) (evidence of finances was relevant when defendant was charged with transporting drugs for sale). And evidence of *lack* of financial resources might be relevant to establish a motive for a profit-seeking intentional crime, such as robbery or forgery. *See United States v. Jackson*, 882 F. 2d 1144, 1149-50 (9th Cir. 1989) ("Evidence that tends to show the defendant is living beyond his means is of probative value in a case involving a crime resulting in financial gain.") (quoting *United States v. Santii*, 604 F.2d 603, 604 (9th Cir. 1979), *cert. denied.*, 444 U.S. 969 (1979)).

This case, in contrast, does not involve punitive damages, does not involve allegations of a business dealing in contraband, and does not involve circumstances in which the defendant's paucity of resources is an alleged motive. The only facts of consequence in this case are (i) whether Mr. Ray caused the sweat lodge deaths and (ii) whether he did so recklessly. *See* Ariz. Rev. Stat. § 13-1103(A)(1); RAJI (Criminal) ch. 11.03A1 (3d ed. 2008). Argument or evidence regarding Mr. Ray's or JRI's financial condition does not tend to make the existence of either of these facts more probable or less probable than it would be without such argument or

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information or complaint is read all reference to ... ***sentencing allegations shall be omitted***. ... If the verdict is guilty, the issue of non-capital sentencing allegation required to be found by the jury shall then be tried." Ariz. R. Crim. P. 19.1(b)(emphasis added). Thus, if there is any relevance of financial or business practices evidence, it is to a sentencing allegation that the jury may only consider if and after the State secures a conviction.

evidence. Mr. Ray's professional success has no bearing on the State's allegations that Mr. Ray committed reckless manslaughter, and should be excluded from evidence.

Second, as with evidence of Mr. Ray's financial condition, evidence of any supposed tactics or techniques that Mr. Ray employed to promote his business does not tend to make any more probable or less probable that Mr. Ray caused the sweat lodge deaths or that he did so recklessly, and therefore should be excluded. Ariz. R. Evid. 401, 402. There are simply no allegations that Mr. Ray engaged in any criminal conduct with respect to his operation of JRI, and there is no logical connection between his conduct as a business manager and the tragic events at the sweat lodge ceremony on October 8, 2009.

C. <u>The Evidence Is Unduly Prejudicial.</u>

Even assuming *arguendo* that such evidence is relevant, the Court still must balance its probative value against its inflammatory or prejudicial effect, and must exclude the evidence when its probative value is substantially outweighed by its tendency to create unfair prejudice, to confuse the issues, to mislead the jury, or to waste time. Ariz. R. Evid. 403. "Unfair prejudice results if the evidence has an undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror." *State v. Mott*, 187 Ariz. 536, 545 (1997). Evidence of wealth and business methods easily fall into this category. "That a person is feckless and poor, or greedy and rich, without more, has little tendency to establish that a person committed a crime . . . , and its probative value is substantially outweighed by the danger of unfair prejudice." *United States v. Mitchell*, 172 F.3d 1104, 1110 (9th Cir. 1999).

Any marginal probative value of Mr. Ray's wealth that the State might advance is overwhelmingly outweighed by the danger that such evidence will arouse unfair prejudice in the form of an emotional bias. *Cf.* Jackson, 882 F.2d at 1452-53 (J. Reinhardt, dissenting) (warning against use of poverty to establish motive for crimes of financial gain because it invites class-based bias). Evidence of Mr. Ray's financial condition may induce the jurors "to abandon their objectivity and return a verdict based on passion and prejudice" rather than a verdict based on the evidence. *Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal.App.3d 1220, 1241 (1991).

Indeed, even if the State is able to concoct a strained theory of relevance for this evidence, the State cannot alter the inescapable conclusion that this evidence would be prejudicial to a degree that would grossly outweigh any ostensible probative value. Evidence that others view Mr. Ray as having behaved in a manner that is distasteful or unscrupulous is extremely likely to be viewed by the jury as evidence that Mr. Ray is a distasteful and unscrupulous person. This evidence invites the jury to render a verdict based on emotions, passions, and prejudice—and not based on whether Mr. Ray in fact committed the charged offenses. The Court should exclude the evidence so that the jury is not prejudicially influenced in this manner. *See* Ariz. R. Evid. 403; *Mott*, 187 Ariz. at 545.

III. CONCLUSION

For the foregoing reasons, the Court should grant Mr. Ray's motion to exclude all evidence and references to his or JRI's financial wealth and business practices as irrelevant and inadmissible pursuant to Ariz. R. Evid. 404 and 403.

DATED: July 6, 2010

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Copy of the forgoing personally delivered this ___ day of July, 2010, to:
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