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10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

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V1300 CR 201080049
CASE NO. ~~VCR1300CR201080049~~

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**

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JUL -7 AM 10:24 ✓

CECILIA HICKS, CLERK

BY: B. Chamberlain

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

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

19 II. ARGUMENT AND AUTHORITIES

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

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

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

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

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

9 "tends to distract the trier of fact from the main question of what
10 actually happened on the particular occasion. It subtly permits the
11 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."

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

21 **B. The Evidence is Irrelevant.**

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

25 ¹ The State has agreed that Ariz. R. Crim. P. 19.1(b) mandates bifurcation of all aggravating
26 factors, including its allegation that Mr. Ray committed the charged offenses "as consideration
27 for the receipt, or in the expectation of the receipt, of [something] of pecuniary value" pursuant
28 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, unless such ... allegation is an element of the crime charged, ... [t]he trial shall
proceed initially as though the sentencing allegations were not alleged. When the indictment,

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

5 First, the situations in which a party’s wealth is relevant and admissible are few
6 and far between. Most often, such evidence is admissible in civil cases in which the plaintiff
7 seeks punitive damages. *See, e.g., EEOC v. Autozone, Inc.*, 2009 WL 86714, at *1 (D. Ariz. Jan.
8 13, 2009). In a criminal case, its relevance is especially rare. It might be relevant to establish
9 that the defendant made a business out of selling contraband. *See, e.g., State v. Pereida*, 170
10 Ariz. 450, 452-53 (Ct. App. 1992) (evidence of finances was relevant when defendant was
11 charged with transporting drugs for sale). And evidence of *lack* of financial resources might be
12 relevant to establish a motive for a profit-seeking intentional crime, such as robbery or forgery.
13 *See United States v. Jackson*, 882 F. 2d 1144, 1149-50 (9th Cir. 1989) (“Evidence that tends to
14 show the defendant is living beyond his means is of probative value in a case involving a crime
15 resulting in financial gain.”) (quoting *United States v. Santii*, 604 F.2d 603, 604 (9th Cir. 1979),
16 *cert. denied.*, 444 U.S. 969 (1979)).

17 This case, in contrast, does not involve punitive damages, does not involve
18 allegations of a business dealing in contraband, and does not involve circumstances in which the
19 defendant’s paucity of resources is an alleged motive. The only facts of consequence in this case
20 are (i) whether Mr. Ray caused the sweat lodge deaths and (ii) whether he did so recklessly. *See*
21 *Ariz. Rev. Stat. § 13-1103(A)(1); RAJI (Criminal) ch. 11.03A1* (3d ed. 2008). Argument or
22 evidence regarding Mr. Ray’s or JRI’s financial condition does not tend to make the existence of
23 either of these facts more probable or less probable than it would be without such argument or
24

25
26 information or complaint is read all reference to ... **sentencing allegations shall be omitted.** ...
27 If the verdict is guilty, the issue of non-capital sentencing allegation required to be found by the
28 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.

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

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

10 **C. The Evidence Is Unduly Prejudicial.**

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

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

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

10 **III. CONCLUSION**

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

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15 DATED: July 6, 2010

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19 By:  _____

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21 Copy of the forgoing personally
22 delivered this ____ day of July, 2010, to:
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27 By: _____
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