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11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13
14 STATE OF ARIZONA,
15 Plaintiff,
16 vs.
17 JAMES ARTHUR RAY,
18 Defendant.

CASE NO. V1300CR201080049
Hon. Warren Darrow
DIVISION PTB
**DEFENDANT JAMES ARTHUR RAY'S
MOTION TO EXCLUDE AUDIO
RECORDINGS OF 2009 SPIRITUAL
WARRIOR SEMINAR EVENTS**
Chambers Conference Requested

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21 Defendant James Arthur Ray, by and through undersigned counsel, hereby moves this
22 Court to preclude the State from introducing as evidence the audio recordings from the 2009
23 Spiritual Warrior seminar events. This motion is supported by the following Memorandum of
24 Points and Authorities.
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27
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SUPERIOR COURT
COUNTY OF YAVAPAI, ARIZONA
2011 FEB 24 AM 9: 08
JEANNE HICKS, CLERK
Stephanie Kling

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 On February 18, 2011, the State noticed its intent to introduce evidence of the audio
3 recordings of the entire five-day Spiritual Warrior retreat in its Amended Exhibits List. The
4 recordings begin on Sunday, October 4, 2009, and capture hours of personal sessions between
5 Mr. Ray and the many participants (and between the participants themselves) over a five-day
6 period, culminating with the pre-sweat lodge orientation. All of the recorded content prior to the
7 pre-sweat lodge orientation is irrelevant to the charged crimes, and much of it contains sensitive
8 information about participants and the decedents that the State has specifically moved to exclude.
9 See State's Motion in Limine re: Pretrial Issues, filed 10/26/10. Regardless of how this Court
10 rules on the admissibility of the October 8 pre-sweat lodge orientation itself, the Court must
11 exclude from evidence all of the remaining content on the Spiritual Warrior audio recordings.

12 1. The audio recordings are irrelevant and therefore inadmissible. The recordings begin
13 on Sunday, October 4, and include literally *days* of dialogues between Mr. Ray and the seminar
14 participants. The conversations span a wide range of topics, from team-building exercises to
15 discussions of participants' very personal and private issues. There is simply nothing in these
16 extended discussions that could have any bearing on whether Mr. Ray committed the charged
17 crimes of reckless manslaughter on the afternoon of October 8. Because the recordings do not
18 make more or less probable any fact of consequence to the charged crimes, they must be excluded
19 pursuant to Rule 401 and 402. And because playing selected *out-of-context* excerpts of Mr.
20 Ray's recorded exhortations to and counseling of participants may leave jurors with an unduly
21 prejudicial view of him, the recordings must also be excluded pursuant to Rule 403.

22 2. In addition, the recordings present a serious difficulty that implicates both the privacy
23 of recorded participants and the fairness of Mr. Ray's trial. The recordings include very sensitive
24 personal information about participants, including the decedents. In December, the State moved
25 to prohibit the Defense from introducing evidence of personal information of this nature. See
26 State's Motion in Limine re: Pretrial Issues, filed 10/26/10. The Defense responded that it agreed
27 with the State's desire to protect the participants' privacy and had no intention of introducing
28 such evidence. See Defendant's Reply to State's Motion in Limine re: Pretrial Issues, filed

1 11/08/10. The Defense still strongly prefers to maintain the participants privacy and avoid
2 disclosing any sensitive information. But if the State were to play for the jury excerpts of Mr.
3 Ray's remarks during seminar proceedings in the days leading up to the sweat lodge ceremony,
4 the Defense would have no choice but to put those remarks in context by playing the other half of
5 the conversation—the participants' own statements.¹

6 The Defense requests in-chambers review of this matter to discuss its concerns with the
7 Court and State in a manner that is respectful of the privacy concerns of the parties involved.
8 Thereafter, the discussion could be moved into open court should the Court or State so request.
9 The Defense further requests that the State be precluded from making any mention of the audio
10 recordings to the jury until the Court has ruled on this motion.

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12 DATED: February 24, 2011

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15 THOMAS K. KELLY

16
17 By:  _____

18 Attorneys for Defendant James Arthur Ray

19 Copy of the foregoing delivered this 24 day
20 of February, 2011, to:

21 Sheila Polk
22 Yavapai County Attorney
23 Prescott, Arizona 86301

24 by  _____

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26
27 ¹ The Defense renews for the record its objection, previously briefed, that the introduction of these
28 recordings into evidence violates Mr. Ray's Fifth Amendment privilege against self-incrimination under
the federal Constitution. See Defendant's Response to State's Motion to Compel, filed 12/13/10.