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IN THE UTAH SUPREME COURT

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	NOTICE OF POTENTIAL
	:	NEWLY-DISCOVERED
v.	:	EVIDENCE
	:	
WARREN STEED JEFFS,	:	Case No. 20080408-SC
	:	
Defendant/Appellant.	:	

The State of Utah hereby gives notice to the Court and Appellant Warren Jeffs' counsel of potential newly-discovered evidence. In the interests of justice and because of these unique circumstances, the State would not oppose, should Jeffs request it, a stay of the appeal and a remand for the purpose of developing a factual record regarding the potential newly-discovered evidence, and, thereafter, further briefing and argument as warranted. The basis for this notice follows.

Jeffs has appealed his two rape convictions based on party liability. The Court heard oral argument in November 2009, and the appeal is currently under submission. Jeffs is

currently facing prosecution on similar charges involving the same victim—Elissa Wall—in Arizona. Appellate counsel for the State of Utah has recently learned that the Arizona prosecutor has discovered information that may be pertinent to Jeffs’ Utah convictions.

On rebuttal in the Utah trial, the State called Jane Blackmore, a Canadian midwife, who had treated Elissa Wall during a pregnancy that ultimately ended in a miscarriage. *See* State’s Brief, 16-17. The midwife testified to statements Elissa made to her regarding her marriage to Allen Steed and their sexual relationship. *Id.* The State introduced into evidence the midwife’s records, which corroborated her testimony. *See* State’s Exhibit 43.

Two days ago, the Arizona prosecutor reported to the Utah trial prosecutors that there exists a possibility that Exhibit 43 does not contain the midwife’s original records. The Arizona prosecutor further reported that Exhibit 43 may contain records created by the midwife after the fact and in preparation for the Utah trial, because the midwife had lost her original records. According to the Arizona prosecutor’s report, it is possible that Elissa—either wittingly or unwittingly—helped the midwife in re-creating the records. It is the State of Utah’s understanding that the Arizona prosecutor has already discussed these allegations with Jeffs’ Arizona counsel. The Utah trial prosecutors have discussed the allegations with Jeff’s Utah attorneys.

The Utah trial prosecutors are currently investigating these allegations and have not yet been able to substantiate them. The Utah prosecutors knew nothing of these allegations

at the time of trial. Nevertheless, the State of Utah believes that it is ethically bound to provide notice of this potential newly-discovered evidence both to the Court and to Jeffs' Utah counsel.

In providing this notice, the State does not concede the constitutional materiality of these allegations, even if proved true. However, given the potential exculpatory—impeachment—nature of the information, if Jeffs requests it, the State would not oppose a stay of the appeal and a remand to the trial court for the purpose of developing a factual record on these allegations, and thereafter to further briefing and argument as warranted.

RESPECTFULLY SUBMITTED this _____ day of _____, 2010.

MARK L. SHURTLEFF
ATTORNEY GENERAL

LAURA B. DUPAIX
ASSISTANT ATTORNEY GENERAL

MAILING CERTIFICATE

I hereby certify that on this ____ day of _____, 2007, I caused a copy of the foregoing Notice to be mailed and faxed to the following:

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