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JEAN DUNN, CLERK
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IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

Cause no. V1300CR201080049

Div. PTB

STATE'S RESPONSE TO
DEFENDANT'S MOTION IN LIMINE No. 9
TO EXCLUDE THE TESTIMONY
OF RICK ROSS

The State of Arizona, by and through undersigned counsel, hereby requests that the Court deny Defendant's motion *in limine* to exclude the testimony of Rick Ross. The motion should be denied for the reasons set forth in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Relevant Facts

The State retained Rick Ross as an expert witness to educate the jury about the topic of Large Group Awareness Training (LGAT). LGAT is a powerful persuasive technique that can be used to cause persons to behave differently than common sense or wisdom would otherwise dictate. The State will offer evidence that defendant utilized many of the principles of LGAT in an attempt to keep the victims from leaving the sweat lodge.

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1 Mr. Ross has studied cults and the persuasive techniques used by cults for approximately
2 twenty five years. Mr. Ross previously testified as an expert in the courts of ten (10) states, as
3 well as qualifying in 2008 as an expert in religious cults and coercive persuasion following a
4 *Daubert* hearing in a federal trial court in California. Mr. Ross has published articles on cults and
5 coercive persuasion, has lectured at numerous universities, including the University of Chicago,
6 Baylor University, and the University of Pennsylvania. Mr. Ross has been cited or interviewed as
7 an expert on numerous local, national, and international news outlets.

8
9 Mr. Ross maintains an extensive library on cults, and on the area that he will be called to
10 testify, Large Group Awareness Training (LGAT). In preparing a report in this matter, Mr. Ross
11 cited to a number of scholarly articles on the topic.

12 As noted in the ninth motion *in limine*, and in the State's own motion *in limine*, Mr. Ross
13 has been involved with incidents where he assisted in the forcible "deprogramming" of adult cult
14 members. However, Mr. Ross will not be called to testify about cult deprogramming.

15
16 Of crucial importance to this case is the state of mind of the victims, as conditioned and
17 known by Defendant, which caused them to remain inside the sweat lodge in spite of excessive
18 heat conditions. Participants will testify that if the sweat lodge ceremony had been held on the
19 first day of the seminar, participants would have exited early and refused to subject themselves to
20 the excessive heat environment. Defendant used certain identified techniques, known as Large
21 Group Awareness Training, throughout his five day-long seminar, conditioning his participants to
22 set aside their own common sense and beliefs, to follow Defendant's lead and to trust him.

23
24 The jury will hear evidence that Defendant used the metaphor of death during his five
25 day-long seminar with constant emphasis, through Defendant's lectures and his planned activities,
26 on conducting themselves as "honorable warriors." The last event of his seminar was the sweat

1 lodge, wherein Defendant intentionally took his participants up to the edge of death, using heat,
2 with the goal of creating a mind-altering experience for them. During the days preceding the
3 sweat lodge, Defendant conditioned participants to trust him, to follow his lead, to not question
4 his authority, to set aside their personal beliefs and common sense, and to believe his teachings
5 that they would experience a “breakthrough” by facing and defying death in the sweat lodge.
6
7 During the week, Defendant consistently set physically challenging goals, conditioning
8 participants to live up to Defendant’s expectations. Normally, individuals would remove
9 themselves from an uncomfortable environment, such as excessive heat. The jury will hear
10 testimony from participants that they felt an obligation to persist through the stress of the sweat
11 lodge to match up to Defendant’s expectations. Ultimately, the jury will learn that participants
12 remained in the excessive heat under the belief that the excessive heat would lead to
13 enlightenment.
14

15 Testimony about the LGAT techniques used by Defendant throughout the seminar’s
16 activities to condition participants to follow him inside, and stay inside, a sweat lodge with
17 excessive heat includes:

- 18 • Defendant provided information about each activity at the Spiritual Warrior Seminar on a
19 need-to-know basis only, and the “Participant Guide” mailed to each participants notified
20 them they would receive very little information about any event prior to its undertaking.¹
- 21 • A “Code of Silence” was imposed on participants from Tuesday afternoon until Thursday
22 after breakfast when the silence was lifted. “Punishment” was imposed for breaking the
23 silence or breaking Defendant’s rules.
- 24 • One of the Defendant’s activities prior to the sweat lodge was the “Samurai Game”
25 wherein those pronounced dead by “God,” played by Defendant, had to lay still on a cold
26 cement floor with absolutely no body movement, in some cases for up to 5 hours. If the

¹ Spiritual Warrior Participant Guide, dated July 2, 2009, (bates 02574), para. 3: “Keep in mind that we will be working diligently to make this event memorable. For this reason, it is important that we do not disclose any further information regarding the event schedule or planned activities. However, we will tell you that it is going to be an exciting, unforgettable, and transformational week!”

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1 “deceased” moved or spoke, a second team member was then “killed” and underwent the
2 same conditions. The testimony in this case will reveal that one of the victims, Kirby
3 Brown, was “killed” during this game and laid without moving, without using bathroom
4 facilities, for approximately five hours and missed dinner.

- 4 • Following the Samurai Game and dinner, participants were then taken to isolated spots in
5 the surrounding desert for a “Vision Quest,” still under the Code of Silence, and made to
6 remain inside a small area called their “medicine wheel” for the next 36 hours (even when
7 defecating), without food or water.
- 8 • Throughout the seminar, participants were told to let each other “have their own
9 experiences” and discouraged from helping or consoling one another. They were
10 conditioned through LGAT techniques to trust only Defendant, and to set aside their own
11 instincts and reactions, thus creating an environment where, as a group, participants
12 engaged in conduct not normal to them.
- 13 • Throughout many events, participants were allowed to speak only when Defendant
14 allowed them to do so. Even the ability and the opportunity to use bathroom facilities
15 were controlled by Defendant.
- 16 • Various LGAT techniques were used by Defendant throughout the week to condition his
17 participants to follow him unconditionally into the dangerous environment of the sweat
18 lodge. They include:
 - 19 ○ Defendant constantly exhorted participants to “play full-on,” to achieve maximum
20 benefits from his seminar, and to get the full value of the weekend. Participant
21 Stephen Ray will testify that “playing full on” meant if Defendant told you to do
22 something, you were supposed to do it; to the extent you did not do it, you were
23 not playing full one and were not getting the full value of the weekend.
 - 24 ○ The seminar began with a head-shaving ritual wherein the majority of the 56
25 participants shaved their heads.
 - 26 ○ Participants were fed a vegetarian diet so they would “not be grounded.”
 - Participants were deprived of sleep, with activities beginning with yoga before 7
a.m., staying up late (in some instances all night) writing in their journals (called
“recapitulation”).
 - Activities included mediation with loud music, and “breath work” to achieve
“altered states.”
- According to witnesses, Defendant lectured participants that something has to die for
something new to emerge; if you don’t die when you are pushing your threshold, you
break through and reorganize at a higher capability and capacity; and that when you are in
an environment of breakthrough learning, things will not look normal.

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- Most, if not all participants will testify they remained inside the sweat lodge because they did not want to disappoint Defendant and/or they trusted him.

- Participants were referred to as “warriors” throughout the seminar and repeatedly admonished to act “honorably” and “impeccably.” This admonishment continued up to within minutes of entry into the sweat lodge as participants were briefed about the sweat lodge and told to ignore their bodies’ symptoms of heat illness, such as vomiting and passing out. The jury will hear the Defendant’s own words telling participants, just prior to entering the sweat lodge, that they must ignore “transcend” their physical bodies inside the excessive heat environment:
 - “And you can do this. You can do this. Regardless of whether you think you can or you can’t you can, I know you can. We’ve been doing this for years, you can do this. It’s just a matter of whether or not you will. And there’s gonna come a time where you’re gonna want to run, you’re gonna want to bolt. I know cause I feel that way too and it’s in those moments where you get to say hey, this is my chance to live impeccably. This is my chance to live honorably and to to live my values above and beyond my moods. Because mood says get the hell out of here but this is my commitment and what I’m willing to do and so that’s why it’s such a great, great metaphor.” *Transcript of audio recording of pre-sweat lodge briefing, page 42.*

 - Participants were told to bring “a determination of steel and a commitment to show yourself and the universe that you’re willing to live your values above and beyond your moods or your physiological creeks and crones.” *Transcript of audio recording of pre-sweat lodge briefing, page 47.*

- These techniques continued inside the sweat lodge where Defendant told participants it was “blasphemous” and “sacrilegious” to leave the sweat lodge except during the few minutes in between rounds. During the ceremony, Defendant yelled at participants for lifting the edge of the tent in a desperate attempt to get some fresh air.

II. Law & Argument

A. LGAT Testimony is an Appropriate Subject for Expert Testimony

Defendants motion in limine cited to *State v. Montijo*, 160 Ariz. 576, 774 P.2d 1366 (App. 1989) and *State v. Moran*, 151 Ariz. 378, 728 P.2d 248 (1986) for the proposition that Mr. Ross’s testimony is not permitted. Those cases do not stand for the proposition that an expert may not testify about psychological traits or human motivation. Rather, they stand for the proposition that

1 an expert may not **both** explain a psychological trait **and** render a particularized opinion as to
2 whether a named victim acted pursuant to that trait or motivation.

3 The State does not intend to ask Mr. Ross to give an opinion as to how any particular
4 victim acted in this case, or why any victim acted in such a way. Rather, the State intends to call
5 Mr. Ross to educate the jury about the common LGAT techniques that defendant employed. Mr.
6 Ross may be asked hypothetical questions (based upon facts in evidence) as to whether certain
7 statements by Mr. Ray, or conduct by Mr. Ray, is consistent with LGAT techniques. Mr. Ross
8 will not be asked whether Mr. Ray's use of LGAT techniques caused any particular victim to
9 remain inside. That ultimate conclusion, as correctly noted in *Montijo* and *Moran*, will be left to
10 the jury to decide based upon the facts and trial testimony.

11
12 **B. Mr. Ross is Qualified To Testify as an Expert**

13 As noted *supra*, Mr. Ross has studied cults and the persuasive techniques used by cults for
14 approximately twenty five years. LGAT is a common persuasive technique studied by Mr. Ross.
15 Mr. Ross previously testified as an expert in the courts of ten (10) states, as well as qualifying in
16 2008 as an expert in religious cults and coercive persuasion following a *Daubert* hearing in a
17 federal trial court in California. Mr. Ross has published articles on cults and coercive persuasion,
18 has lectured at numerous universities, including the University of Chicago, Baylor University,
19 and the University of Pennsylvania. Mr. Ross has been cited or interviewed as an expert on
20 numerous local, national, and international news outlets.

21 Mr. Ross maintains an extensive library on cults, and on the area that he will be called to
22 testify, Large Group Awareness Training (LGAT). In preparing a report in this matter, Mr. Ross
23 cited to a number of scholarly articles on the topic.
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1 Rule 702, Ariz.R.Evid., provides that “[i]f scientific, technical, or other specialized
2 knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a
3 witness qualified as an expert by knowledge, skill, experience, training, or education, may testify
4 thereto in the form of an opinion or otherwise.” Clearly, Mr. Ross’ 25 years of training, study, and
5 research have qualified him to render an expert opinion on LGAT.
6

7 As noted *supra*, the State does not intend to elicit Mr. Ross’ opinions on the victims’
8 mental states or on the mental states of the other 2009 Spiritual Warrior participants. Rather, Mr.
9 Ross will provide the jury with the specialized knowledge necessary to understand the evidence
10 the jury will hear from other witnesses regarding the LGAT techniques employed by Mr. Ray in
11 connection to the 2009 sweat lodge.

12 **C. Mr. Ross’ Testimony is Relevant to the Causation Element**

13 The State must prove defendant caused the deaths of the three victims. A.R.S. §13-1103.
14 Conduct is the cause of a result when both of the following exist: 1) **But for the conduct the**
15 **result in question would not have occurred;** and 2) The relationship between the conduct and
16 result satisfies any additional causal requirements imposed by the statute defining the offense.
17 A.R.S. § 13-203(A). (emphasis added).
18

19 Defendant encouraged the victims to remain in an unsafely hot sweat lodge maintained by
20 defendant, causing their deaths. The State will offer evidence that the victims died of heatstroke
21 resulting from conditions inside the sweat lodge. The State will offer evidence defendant
22 controlled those deadly conditions by controlling the amount of heat inside the lodge, the amount
23 of humidity inside the lodge, and the length of time the sweat lodge remained occupied. The
24 State will offer expert medical testimony that heatstroke is an often fatal condition that falls at the
25 end of a continuum of heat related illnesses. If the victims had left the sweat lodge before they
26

1 reached the heat stroke point on the continuum, they may not have died. Defendant's usage of
2 LGAT techniques contributed to the victims remaining inside the sweat lodge, and thus to their
3 deaths. But for defendant's conduct, the result in question (death) would not have occurred.
4 Defendant's ninth motion in limine attempts to confuse the *conduct* (defendant's use of LGAT)
5 with the *result* of the conduct (the victims' decisions to stay inside the sweat lodge).
6

7 Moreover, as the Court noted in its 13 January 2011 under advisement ruling, **a victim's**
8 **mental state is relevant if defendant was aware that a victim's particular mental state will**
9 **result in the victim being placed at risk of defendant's conduct.** After learning about how LGAT
10 can be used to encourage people to do things against their best interests, the jury can make the
11 reasonable inference that defendant's affirmative use of LGAT techniques meant defendant knew
12 that participants would be influenced to the point they would remain inside the sweat lodge, and thus
13 suffer heat stroke due to the hot humid sweat lodge conditions created by defendant.
14

15 The motion *in limine* argues that a number of participants in the 2009 sweat lodge are
16 anticipated to testify to the effect *they* did not feel compelled to stay inside. The State believes this is
17 an accurate assessment. Notably however, no such evidence is proffered by the defense pertaining to
18 the three named victims in this case. Undoubtedly, the defense will offer testimony of other
19 participants to rebut the State's LGAT evidence, but contrary evidence does not make the LGAT
20 evidence inadmissible. As with any other fact at issue, the jury must decide which evidence to
21 believe, and which to discount.
22

23 Despite the motion *in limine's* suggestions to the contrary, **Mr. Ross' testimony will not be**
24 **used as an avenue to backdoor in Rule 404(b) evidence.** As noted elsewhere in this response, the
25 scope of Mr. Ross' examination will be extremely narrow. Mr. Ross will testify about the subject of
26 LGAT in order to educate the jury on what LGAT is and the common LGAT techniques utilized to

1 cause persons to act against their own best interests. Mr. Ross may be asked hypotheticals (i.e. about
2 group head shaving at the beginning of a program) mirroring facts in evidence to obtain his opinion
3 as to whether the hypothetical conduct constituted an LGAT technique.

4
5 **D. Mr. Ross' Testimony is Relevant to "Complete the Story"**

6 Assuming, *arguendo*, that this Court determines the victims' reasons for staying inside the
7 sweat lodge are not strictly relevant to the elements of the crime, such evidence is still admissible
8 in order to "complete the story" of what happened. Arizona has long recognized that otherwise
9 inadmissible evidence, even such prejudicial evidence as a defendant's other uncharged crimes,
10 may be admitted in order to complete the story so the jury can consider all of what happened
11 attending the commission of a crime. *See State v. Price*, 123 Ariz. 166, 168, 598 P.2d 985, 987
12 (1979), *State v. Rivera*, 103 Ariz. 458, 460, 445 P.2d 434, 436 (1968), *Cert. denied*, 395 U.S. 929,
13 89 S.Ct. 1790, 23 L.Ed.2d 248 (1969); *State v. Hardin*, 99 Ariz. 56, 59, 406 P.2d 406, 407 (1965).

14
15 To qualify under the judicially fashioned "complete the story" doctrine, the evidence must
16 be so blended or connected with the crime of which defendant is accused that proof of one
17 incidentally involves the other **or explains the circumstances of the crime**. *Price* at 168, 598
18 P.2d at 987. Although *Price* dealt specifically with a situation where the evidence that completed
19 the story was inadmissible because it was other act evidence, *Price's* logic rings true for any
20 otherwise inadmissible (i.e. irrelevant) evidence that explains the circumstances of the crime.

21
22 As noted elsewhere in this response, the State does not intend to use Mr. Ross to
23 comment on or otherwise bring in facts from prior sweat lodge events, and the State is not
24 arguing in this pleading that such testimony would be admissible in order to complete the story of
25 what happened in connection with the 2009 sweat lodge events.
26

1 **E. Mr. Ross' Testimony is Not Unduly Prejudicial**

2 A court may exclude relevant evidence if "its probative value is substantially outweighed
3 by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by
4 considerations of undue delay, waste of time, or needless presentation of cumulative evidence."
5 Rule 403, Ariz.R.Evid.; accord *Girouard v. Skyline Steel, Inc.*, 215 Ariz. 126, 129, 158 P.3d 255,
6 258 (App. 2007). A Rule 403 analysis begins with assessment of the probative value of the
7 evidence with respect to the issue for which it is offered. *Id.*; *Shotwell v. Donahoe*, 207 Ariz.
8 287, 295, ¶ 34, 85 P.3d 1045, 1053 (2004). This is balanced against the potential prejudice to the
9 opposing party, i.e., **the extent to which it suggests improper bases for a decision, such as**
10 **emotion, sympathy, or horror.** *Girouard* at 129, 158 P.3d at 258. If the issue is undisputed or
11 other evidence that is less inflammatory but equally probative is available, then it is more likely
12 that the potential prejudice caused by introducing such evidence outweighs the probative value of
13 the evidence. *Id.*

14
15
16 Mr. Ross' expert opinion about the common LGAT techniques will not suggest an improper
17 basis for a jury decision, such as emotion, sympathy, or horror. This is particularly true because
18 Mr. Ross will not be asked to apply his conclusions to any particular victim, or to even opine that
19 defendant utilized LGAT techniques. Additionally, unlike *Girouard*, the evidence is not
20 undisputed as defendant has not stipulated that he utilized LGAT's persuasive techniques. Nor is
21 there equally probative evidence available, as Mr. Ross' expert testimony is the only testimony
22 available to provide the jury with the specialized knowledge necessary to understand the other
23 evidence.
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F. Mr. Ross' Testimony Will Not Backdoor Inadmissible Facts

Mr. Ross will provide the jury with a vital education into common LGAT techniques, and will explain his background and the sources of his knowledge about LGAT. Mr. Ross will not be asked to comment about any facts of this case that are not in evidence or that the court has ruled are inadmissible. The motion *in limine* refers to the State's original disclosed intent to ask Mr. Ross questions about defendant's use of LGAT in connection with prior sweat lodges². Since that time, the court has ruled on the 404 issue regarding prior years events, and the State respects that ruling.

G. Hypothetical Questions

The ninth motion *in limine* correctly argues that hypothetical questions must be based on facts in evidence. Apart from bringing this interesting and uncontested legal maxim to the attention of the court and the State, the motion fails to explain why this maxim is an issue in this case. The motion does not argue that the State intends to do anything other than base its hypothetical questions on facts in evidence. Indeed, the State does not intend to call Mr. Ross until the jury has heard testimony from Spiritual Warrior participants, employees and other fact witnesses. That testimony will form the factual basis for any hypothetical questions.

III. Conclusion

Mr. Ross is a qualified expert, who has testified in the courts of ten different states and in federal court following a *Daubert* hearing. Mr. Ross' LGAT testimony is relevant to establish the causation element, is relevant because defendant was aware that the victims' mental states would result in the victims being placed at risk of defendant's conduct, and is also relevant to complete

² The State had intended to establish that defendant knew from the prior sweat lodge events that he could cause participants to stay inside the lodge.

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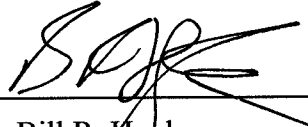
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the story. Accordingly, for all of the foregoing reasons, the ninth motion *in limine* should be denied.

Respectfully submitted this 8th day of February, 2011.

By 
Bill R. Hughes
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