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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JORDAN LINN GRAHAM,  
Defendant.

CR 13-37-M-DWM

**DEFENDANT GRAHAM'S  
TRIAL BRIEF**

**I. INTRODUCTION**

This case alleging murder or manslaughter against defendant is set for jury trial in Missoula commencing December 9, 2013. Under the Court's scheduling order the parties are authorized to file trial briefs (Doc. #39). Following is defendant Graham's

trial brief under the terms of the Court's order.

## II. WHAT HAPPENED?

Jordan Graham and Cody Johnson knew each other a little less than two years before they married. Cody proposed in December of 2012 and the wedding celebration was held on June 29, 2013 in a park in Kalispell, Montana. About 90 people attended, mostly friends and family from the Baptist church where Jordan and Cody spent just about every Sunday. Eight days later Cody disappeared, and was reported missing to the Kalispell Police Department on July 8, 2013.

Jordan told police officers and friends of Cody that he had left in a dark vehicle with unknown friends on the night of July 7<sup>th</sup>. Her story changed over time. Searches were conducted. On July 11<sup>th</sup> Jordan, accompanied by a small group consisting of her mother, her brother and two friends, went to Glacier National Park to look for Cody, who had been reported missing July 8<sup>th</sup> just about one week after the wedding.<sup>1</sup>

Jordan wanted to check a popular spot in the park known as "The Loop" because Cody visited the park frequently and liked the area. Jordan climbed around several steep places looking for a better view into the ravine. After some searching she yelled back to the others that she thought she could see what looked like a body

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<sup>1</sup>It merits emphasis that the evening before [July 10<sup>th</sup>] Jordan likewise went to the same site with other friends. Those friends dissuaded Jordan from climbing down the ravine that night so Cody's body was not discovered until the next day.

at the bottom of the ravine. Her brother Michael climbed down to where Jordan was and also saw what he thought was a body down below. Unfortunately, that body turned out to be Cody's. Jordan quickly became the object of suspicion due to the obvious inconsistency between her leading others to the situs of Cody's body, while at the same time having claimed no knowledge of Cody's whereabouts.

Witnesses will describe Jordan Graham, who was 21 at the time, as naive, immature, socially inept, shy, quiet and unable to relate well to adults. She is deeply religious, was not allowed to date until she turned 18, and does not believe in premarital sex. She lived at home with her parents until the night of the wedding. Her only employment has been in the day care industry. Witnesses will testify she is wonderful with children, and their children all loved her. She was trusted to house sit, baby sit, take care of infants as young as 4 weeks old. Jordan is trusted and reliable with their children, but unable to converse and interact with adults, especially those she does not know. Witnesses will talk about taking Jordan with them on out of town trips and how their friends wondered aloud what was wrong with her. She wouldn't talk.

Cody Johnson will be described as a great person. Four years older than Jordan, he did not attend church, liked to race cars, drink beer, play softball and hang with his friends, both male and female. Cody's circle of friends generally will be

referred to by witnesses as "the car people." They met on weekends to drag race, drink beer, and hang out together. Cody loved to drive fast, even described as recklessly, and accumulated many traffic tickets in his short life, including one for driving 120 mph in a 70 mph zone. He totaled his pick-up truck.

Then Cody met Jordan and witnesses will testify Cody changed for Jordan. He began attending church and stopped most of his drinking. He didn't hang out as much with the car people because Jordan didn't want to associate with them. In turn, the car people didn't like Jordan. Several of Cody's car friends will testify they told Cody not to marry Jordan, she wasn't his type.

Cody Johnson joined Faith Baptist Church. He began attending with Jordan and her family regularly, and soon his mother joined too. Witnesses will describe Faith Baptist church as a small congregation and church activities are central to many of the members lives. Jordan's family is religious, their children were brought up in the faith and their friends were members of the same church. The Faith Baptist Church's Pastor is the father of C.B. and grandfather to C.B.'s two adult children. This family figures heavily in the rumors spread about Jordan after Cody's death and they and other church members will be testifying in the trial. The congregation liked Cody and so did Jordan's friends. Some of the church members may testify they also told Cody not to marry Jordan.

Many people felt compelled to try and interfere with Cody and Jordan's relationship, others thought it was a perfect match and they were two people very much in love. Videos and photographs from the wedding will show their affection. They look at each other and smile, but are both obviously nervous. Some witnesses are expected to criticize, after the fact, every tear, every look, every action of Jordan on her wedding day. They will claim she cried too much walking down the aisle and appeared not want to be there. Other witnesses thought the wedding was perfectly normal and that Jordan was like any bride. They will tell you Jordan and Cody were happy.

Some government witnesses are expected to testify Jordan wasn't in love with Cody. She became quiet and remote in the weeks leading up to the wedding and wasn't actively involved in the planning. Other witnesses will say she was very involved in her wedding preparations. Explaining she was happy and looking forward to her life with Cody, even going so far as to discuss in text messages what their first child might look like.

Jordan commissioned a special song to be written for her and Cody's first dance at their wedding and flew out to California with her brother to sing backup vocals on the song as a special touch. One witnesses opined to police after Cody disappeared that the song was a lie, and claimed Jordan never even commissioned it.

After the wedding and one night honeymoon, Cody and Jordan Johnson started married life together with no time to decompress. Most people who saw them that week are expected to testify they were happy. But Jordan does reach out to her best friend via text messages asking questions about her marriage and whether she did the right thing. Jordan wondered if they should have waited until they were older. Jordan's friend counseled her to be patient, and said she'd gone through the same thing too, but it all worked out. Jordan continued to send messages to her friend, worried that she wasn't being honest with Cody. Eventually she felt compelled to tell Cody about her wedding blues. She decided to talk to him on Sunday, July 7<sup>th</sup>. In a text message Jordan told her friend she was going to talk to Cody and her friend responds that she will pray for her.

After Sunday night church and dinner with church members, Cody and Jordan went home and got into an argument. Cody suggested a drive to Glacier National Park to watch the sun set. He went to the park often, purchasing an annual pass. He previously bragged about how fast he could go around some of the corners. Government exhibits and testimony are expected to demonstrate Cody drove to the park at least twice as fast as the speed limit allowed. For an unknown reason, Cody decided to climb down to a dangerous narrow ledge, and convinced Jordan to join him there. Jordan told the FBI Cody grabbed her arm while on the ledge. Jordan

reacted instinctively and pushed him off. Cody lost his balance and went off the ledge, landing some 200 feet below in a shallow pool of water.

The next day, when Cody didn't show up for work, word spread that he was missing. Several witnesses will testify they immediately knew Jordan had done something to him, murdered him. These are the same witnesses that will testify they didn't really like or know Jordan anyway. One of Cody's friends broke into the townhouse Jordan and Cody shared looking for evidence of a crime. He convinced himself that Jordan had done something horrible to Cody and searched the crawl space and trunk of their car for a body. He even checked her laundry for bloody rags. As the word of Cody's disappearance spread, people compared notes, and observations and spread rumors.

Jordan came under intense scrutiny. Witnesses are expected to testify they acted friendly toward Jordan only to find out what she knew. People made notes of what she said and started contacting the police. It may be very difficult to determine what each witness heard, and what they are just repeating from others. The defense contends that once these people decided Jordan had killed Cody, they began treating her like a criminal. Jordan responded by withdrawing even more, confirming their belief.

A church prayer service for Cody was held on the Wednesday night following

his disappearance. People are expected to testify she acted as if nothing happened. Maybe that was what Jordan was trying to convince herself. In a statement Jordan made to the FBI she said she felt 100% responsible for his death. She pushed last so it's her fault.

Members of the Faith Baptist church decided they didn't want Jordan attending their church any more and asked her to leave, and Jordan's best friend told her not to contact her anymore.

### III. EVIDENCE ISSUES

Although the pretrial phase of this case was eventful and fast paced much was accomplished and we expect the trial to proceed smoothly. There is however one area of concern regarding the totality of the evidence especially as regards the category of impeachment evidence. No doubt impeachment can be a useful tool for any litigant but it is no substitute for substantive proof:

In no case is it permissible for the jury to use the impeaching evidence in deciding the defendant's guilt or innocence, as government counsel incorrectly urged it to do here. Logically, therefore, the strategem is of questionable relevance to the trial, and the government has advanced no good reason to permit it in the face of strong reasons against it. *See United States v. Ragghianti*, 560 F.2d 1376, 1381 (9th Cir. 1977).

*United States v. Whitson*, 587 F.2d 948, 953 (9<sup>th</sup> Cir. 1978)



Although we are not certain it appears as if the government intends to use copious amounts of impeachment to show that defendant never wanted to marry Cody. And to suggest that defendant was just “setting Cody up” for some kind of inevitable tragedy. This retrospective look at the relationship between defendant and Mr. Johnson could have two damaging effects on the trial of this case. First, it could take the proceeding into an area of very questionable relevance under Rules 401 and 402. Granted, a certain amount of courtship evidence is necessary subtext. But to belabor it to a point that it becomes the objective focus of the trial would be a mistake. Anyone can have misgivings about many things from buying a car to adopting a child; that doesn’t mean that the party in question started out with the intent to do wrong.

Second too much of this evidence will only serve to distract the jury from the real issues in the case. Rule 403. The government alleges defendant murdered her husband. To prove that there must be proof of premeditation and/or malice aforethought. Because defendant had misgivings about her marriage doesn’t prove that defendant was intent on killing Cody and more to the point to try and suggest through opinion testimony that Cody should have never married the defendant in the first place is little more than far afield impeachment of the fact that the couple did indeed marry before their entire Church community.

Bottom line: impeachment is no substitute for substantive evidence as the *Whitson* case holds. So if the government has no more than that for the alleged element of premeditation the Court should be quick to Rule 29 that charge.

#### IV. RULE 29 ISSUES

Federal Rule of Criminal Procedure 29 enables the trial judge upon his or her own initiative or motion of the defense to direct a judgment of acquittal in a criminal trial at any time prior to the submission of the case to the jury. Alternatively, the trial judge may "reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict." Rule 29(b).

Thus, where the judge orders acquittal before the charge goes to the jury, either at the close of the government's case or, presumably at the close of all evidence, this precludes retrial and bars appeal of any legal error that led to the acquittal. See *United States v. Ball*, 163 U.S. 662, 671 (1896)." See also, ADVISORY COMMITTEE NOTES to Rule 29 ("Thus, the government's right to appeal a Rule 29 motion is only preserved where the ruling is reserved until after the verdict.")

V. CONCLUSION

WHEREFORE, we would appreciate the Court considering these things during the trial in this case.

RESPECTFULLY SUBMITTED December 5, 2013.

/s/ Michael Donahoe  
MICHAEL DONAHOE  
Senior Litigator  
Counsel for Defendant Nasir

VI. CERTIFICATE OF SERVICE  
L.R. 5.2(b)

I hereby certify that on December 5, 2013, a copy of the foregoing document was served on the following persons by the following means:

1 CM-ECF  
\_\_\_\_\_ Hand Delivery  
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