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**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

STATE OF UTAH,	Plaintiff,	MEMORANDUM IN SUPPORT OF MOTON TO EXCLUDE TESTIMONY FROM ANNA OSBORNE WALTHALL
vs.		CASE NO. 121402323
MARTIN J. MACNEILL,	Defendant.	JUDGE SAMUEL D. MCVEY

Defendant, MARTIN MACNEILL, by and through his counsel, RANDALL K.

SPENCER and SUSANNE GUSTIN, submits this MEMORANDUM IN SUPPORT OF
MOTION TO EXCLUDE TESTIMONY FROM ANNA OSBORNE WALTHALL.

STATEMENT OF FACTS

1. The Utah County Attorney's Office (hereinafter "UCAO") called Anna Osborne Walthall

(hereinafter, “Anna”) at the preliminary hearing in this matter and intends to call her at trial.

2. According to Anna, she had an affair with Martin MacNeill (hereinafter, “MacNeill”) which began in March 2005, (See Preliminary Hearing Transcript (hereinafter “PHT”), at 539), and ended at the end of 2005 or beginning of 2006. Id. at 576.

3. Pursuant to the requests of the UCAO Investigators, Anna produced hundreds of pages of emails and journal entries. None of the email or journal entries which are from 2005 and 2006, when MacNeill and Anna were communicating, mention MacNeill telling Anna that he had tried to kill his mother when he was 8; that he had killed his brother; that he had written a JAMA article titled, “Its Over Debbie;” that he had offered to kill her husband, Bek; or that he had killed people while practicing medicine as she testified he did at the preliminary hearing. Id. at 551-574

4. Anna was quite upset when she realized that the affair was going to end and even expressed a desire to hurt MacNeill. In a journal entry on March 27, 2006 that was disclosed by the UCAO, Anna stated, “I hate him. I hate him....I want to hurt him.”

5. Anna ceased communicating with MacNeill in the spring of 2006.

6. In November of 2009, the UCAO contacted Anna. Anna had read stories on the internet regarding MacNeill and the accusations being made by his daughters that he had killed Michele.

7. Anna disclosed to the UCAO that she suffers from dissociative identity disorder, formerly known as multiple personality disorder.

8. At the preliminary hearing, Anna further disclosed that she can communicate telepathically and has a sixth sense that others do not possess. See PHT at 581, 594, & 596.

9. In a letter to David Berkowitz, which will be discussed in more detail below, Anna indicated that she is able to experience the sins of people with whom she is having sex.

10. In Anna's communication that was provided to the UCAO and that was disclosed to MacNeill, she speaks of various "voices" that come out of her which are her multiple personalities.

11. It seems impossible for a defendant to cross-examine a witness like Anna in a homicide case, not knowing which personality or voice is speaking while she is testifying, or which voice or personality potentially has the knowledge of the issue at hand.

12. Anna seems to have an obsession with or about serial killers. In one of her emails that was disclosed by the UCAO, she talks about a dream she had of meeting a trucker who becomes her boyfriend and with whom she sleeps. Her boyfriend trucker kills another trucker who was going to kill her and her boyfriend, and after her boyfriend trucker kills the other trucker, she realizes that her boyfriend trucker is the serial killer that has been on the news. His original intentions were to rape and kill Anna, but he had fallen in love with her, and knew that his serial killer "demons" would take over and he would kill Anna if he did not kill himself first. Her serial killer boyfriend then prepares to commit suicide, and she leaves the room so she will not see it. See Exhibit 1--1/4/06 Email.

13. In the summer of 2010 (the date is cut off in the copy that was given to the Defense), Anna wrote an unsolicited letter to David Berkowitz, known as the Son of Sam killer, imprisoned in New York, and discussed at length her assertion of MacNeill's supposed past as a serial killer as

well as other “unusual” content. See Exhibit 2. Interestingly, in this letter, Anna identifies MacNeill’s father as someone who she claims MacNeill killed. Id. Anna asserted that MacNeill tried to kill his mother when he was eight years old by drugging her; that MacNeill killed his father when he was a teenager; that MacNeill killed his brother by drowning him; that MacNeill may have played a role in the death of his other siblings; that he intentionally killed many people through his medical practice to rid society of riffraff; and that he killed his wife by drugging her and drowning her in the bathtub. Id.

14. In Anna’s letter to the Son of Sam killer, she further states that she believes “with her whole heart that MacNeill’s victims were occult blood sacrifices.” Id. She further states that she has adopted MacNeill and that she has attached herself to him so Satan cannot take him, and that she is looking to “join up” with what Berkowitz is doing. Id. The letter to Berkowitz clearly manifests Anna’s lack of connection with reality.

15. In email communication between Anna and the UCAO, which was disclosed after MacNeill’s motion to dismiss, and in the interview between the UCAO Investigators, it is clear that Anna’s ability to perceive reality is affected by outside influences. For example, when Anna spoke to the UCAO investigator on or about November 16, 2009, the following dialogue regarding the death of MacNeill’s father occurred:

Investigator (Inv.): Okay. Alright now let’s just go back to this homicide thing, he talked about killing Vanessa, he talked about trying to kill his mother, did he ever talk about killing his father?

Anna: No.

Inv.: He didn’t huh?

Anna: No.

Inv.: Okay, that's interesting.

Anna: Did he kill his father?

Inv.: *I believe so, uh huh.* The day he took Michele back to introduce her to his father, they knocked on the door and walked in and his father was dead in the house.

Anna: His father? He told me his father was dead already.

Inv.: Oh yeah, I mean this was back in the 1970's.

Anna: Oh okay, yeah gotcha.

See November 16, 2009 Interview between UCAO Investigator and Anna.

16. After initially stating that she had no knowledge of MacNeill killing his father, the UCAO suggested that MacNeill did kill his father, and subsequently, as evidenced in the letter to the Son of Sam killer, Anna not only adopts that assertion as true, but adds to the story. Incidentally, MacNeill's father, Albert W. MacNeill, died in November of 1977, in California, at the age of 79 of natural causes believed to be related to a heart attack.

17. Another example of Anna's zeal to incriminate MacNeill in the death of Michele is manifested in an email that she sent the UCAO on May 21, 2012. See Exhibit 3—5/2/12 emails. In the 5/21/12 emails, she describes an occasion when she and her then husband Bek were staying in a cabin in California, and Bek and MacNeill were conspiring to kill her (Anna). She then goes on to explain that she relayed this information to the UCAO so they could see how MacNeill and Bek conspired to kill Michele. Anna and the UCAO submitted a number of emails to the UCAO about Bek allegedly conspiring with MacNeill, and the UCAO seemingly encouraged her in the thought.

18. On May 31, 2012, the UCAO Investigator questioned Anna about the accuracy of the

allegations she has been making when he did not find information in Bek's journals that Anna had indicated would be found. Subsequently, on June 4, 2012, Anna, reported in an email to the UCAO as follows:

June 4, 2012 email from Anna to Utah County Attorney's Office Investigator
Investigator....

I also want to say that I think I was wrong about Martin being in San Francisco when Bek debilitated my car and trapped me on that mountain. I was beside myself and had no grounds on which to base my statement. Martin's phone records would be the only available confirmation.... But I'm asking that you strike those statements. They were so young!! I like to ponder points...blah blah blah.

See Exhibit 3—June 4, 2012 email.

19. When the UCAO retained Dr. Perper, they sent him an investigative narrative report. In that report, they informed Dr. Perper that MacNeill was such a bad man that he plotted with Anna's ex-husband, Bek, to kill his daughter, Giselle in the Ukraine as well as a former lover of Anna's named Cleve who lives in England:

According to both the journal and Anna's statements, Ulugbek wanted to kill a man by the name of Cleve living in England because he believed Cleve was having an affair with Anna. Martin told Anna Ulugbek was going to go with him to the Ukraine where they were going to kill Giselle, his adopted daughter, then kill Cleve, her alleged lover in England, and fly home. The irony is, Martin was the man having an affair with Anna Osborne at this time. (Note - These journal entries are on Anna's computer hard drive, which is in our possession. See Item #111.)

20. The statement set forth in the quoted passage in paragraph 19 was not produced to MacNeill, and upon inquiry about why we did not have any report of a verbal statement or email from Anna about MacNeill and Bek conspiring to kill Giselle and Cleve, MacNeill's defense

team was told in a November 2, 2012 email that Anna was sending lots of information, and that the statement about killing Giselle in Ukraine and Cleve in England was made verbally by MacNeill to Anna. Contrary to the “irony” that the UCAO attempts to note in its statement to Dr. Perper quoted in paragraph 19, the real irony is that the UCAO is so set on attempting to build a case against MacNeill for a murder that he did not commit, that they do not even recognize that according to Anna’s own testimony as well as objectively verifiable email communication between she and MacNeill, she stopped communicating with MacNeill in the spring of 2006 (save one or two letters she sent him while he was incarcerated which of course made no mention of him wanting to kill Giselle). Giselle did not return to Ukraine until July of 2007. PHT at 849 & 888. Accordingly, Anna’s stories about MacNeill and Bek conspiring to kill Giselle in Ukraine and Cleve in England were, like the rest of her testimony, products of the imagination of one or more of her personalities.

21. Nearly seven months after sending Dr. Perper the report quoted from in paragraph 19, the UCAO sent Anna the following email questioning the facts that she has relayed:

Date: Thursday, May 31, 2012, 3:28 PM

Anna,

I just finished reading the Bek journal entries that you had on your computer hard drive. I can see why you would be fearful of him. I do have a couple of questions. I was hoping to find some conspiracy between Bek and Martin to kill Cleve and Giselle. I didn't see it. Do you know where this came from? I sent Doug an email too asking him. As you pointed out, there were some pages missing from the journal. Did it appear they were ripped out? Do you have any idea why Bek kept a journal? I also noticed that the journal pages appear to be beta stamped. Is that something you put on the page or Bek?

22. After MacNeill filed his motion to dismiss on December 17, 2013, the UCAO disclosed a second recorded interview with Anna Osborne Walthall from October 11, 2010. This interview contained a number of exculpatory items including the UCAO investigators themselves, questioning the credibility of Anna. It contains a lengthy discussion about Anna's letter to the Son of Sam killer and the incredible things Anna says in that letter. This interview was not documented in the prosecution's file and was not available to the defense if they had inspected the prosecution's entire file.

23. Anna suffers from multiple personality disorder. (PHT, 576). She believes she has a sixth sense (Id. at 581, 596), can communicate telepathically (Id. at 594), and can experience the sins of the people she has sexual intercourse with. (Letter to Berkowitz). At the end of MacNeill's preliminary hearing, this Court made a specific finding of fact that Anna was not a credible witness. See PHT at 1805. The State does not argue that these alleged statements are true, nor do they claim to have any evidence to support any of these allegations. Nevertheless, they seek to use them at trial as evidence of MacNeill's guilt.

24. Anna corrected the UCAO in relation to an affidavit the UCAO investigators submitted to the Court and clarified that MacNeill told Anna that he would never leave Michele. Anna's subsequent beliefs that Martin may have considered leaving Michele were her own thoughts, and not based on Martin's statements. *See* Exhibit 8 to MacNeill's February 5, 2013 Reply Memo in Support of Motion to Dismiss or Disqualify the UCAO—March 1, 2010 email; Exhibit 8 also has other emails that illustrate Anna's perceived psychic abilities and "aether" communication.

ARGUMENT

I. ANNA OSBORNE SHOULD BE EXCLUDED AS A WITNESS BECAUSE THE UCAO INTENDS TO USE HER TO INTRODUCE IRRELEVANT, INCREDIBLE, EVIDENCE OF ALLEGED PRIOR BAD ACTS.

“[E]vidence of prior crimes, uncharged conduct, or bad acts . . . is admissible if it is relevant to a proper, non-character purpose, and does not pose a danger for unfair prejudice that substantially outweighs its probative value.” State v. Killpack, 191 P.3d 17, 28 (Utah 2008) (quotations omitted); State v. Widdison, 28 P.3d 1278, 1287 (Utah 2001). Whether the UCAO characterizes Anna’s testimony as prior bad acts that were actually committed, or as braggadocious behavior, either way, it would be a prior bad act, the admissibility of which is subject to Rules 402, 403, and 404 of the Utah Rules of evidence.

Anna’s testimony does not in any way identify some sort of homicidal “plan” that included killing Michele 1 ½ to 2 years later. Her testimony does not support a “motive” for killing Michele—even the UCAO suggests that the MacNeill’s motive was to be with Gypsy. Anna’s testimony that MacNeill allegedly drugged his mother when eight years old or drown his brother are not examples of any particular “knowledge” means of murder—virtually anyone knows that overdosing on medication or drowning are common causes of death. Similarly, Anna’s testimony from interaction with MacNeill in 2005 and early 2006 does not evidence “opportunity,” “intent,” “preparation,” “identity,” “absence of mistake,” or “lack of accident.”

A. Anna Osborne’s Testimony of Alleged Statements and Actions of MacNeill in 2005 is Irrelevant, Inadmissible Character Evidence

Only relevant evidence is admissible. Utah R. Evid. 402. Evidence is relevant when it has any tendency to make a material fact more or less probable. Id. at 401. To demonstrate relevance, the government must precisely articulate the evidentiary hypothesis by which a material fact may be inferred from evidence of prior misconduct. U.S. v. Cardall, 885 F.2d 656, 671 (1989). “Evidence of a crime, wrong, or other act is not admissible to prove a person’s character...” Utah R. Evid. 404(b)(1). Permitted uses of evidence of prior misconduct for a non-character purpose include “proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Utah R. Evid. 404(b)(2). However, unless evidence of prior misconduct “tends to prove some fact that is material to the crime charged—other than the defendant’s propensity to commit crime—it is irrelevant and should be excluded.” State v. Bradley, 57 P.3d 1139, 1154 (Utah App. 2002) (Thorne, J., joined by Orme, J., concurring); Utah R. Evid. 404(b).

Anna’s testimony of MacNeill’s alleged attempt to kill his mother more than 40 years before Michele’s untimely death is irrelevant. If MacNeill’s alleged actions while 8 years old were admitted, it would serve no purpose other than communicating to the jury that MacNeill must have acted in conformity of the alleged prior bad act which is specifically prohibited by Rule 404 of the Utah Rules of Evidence. Similarly, if the UCAO asserts that they don’t believe that MacNeill really attempted to kill his mother, but just told Anna that he did, such a statement had no relation to Michele, and admitting such a statement in MacNeill’s trial would serve no other purpose than telling the jury that MacNeill must have acted in conformity with his prior bad act of

talking about attempting to kill his mother.

If the UCAO attempts to articulate some other purpose for introduction of bad act evidence from Anna, the evidence of prior misconduct must still be excluded because any other purpose would be a ruse. In State v. Verde, 296 P.3d 673 (Utah 2012), the Utah Supreme Court held that the trial court abused its discretion by admitting evidence of the defendant's sexual assault of two eighteen year old males to establish intent or a plan in a trial for the alleged sexual abuse of a twelve year old boy. State v. Verde, 296 P.3d at 676-79 (Utah 2012).

In the Verde case, during the summer of 2003, the defendant allegedly put his hands down a 12-year-old boys pants, and touched his genitals. Id. at 676. At trial, the State presented evidence of the prior acts of sexually abusing two 18 year old males for the purported non-character purposes of proving the defendant's "knowledge, intent, plan, modus operandi and/or absence of mistake or accident." Id. at 676-77. The trial court permitted the testimony, concluding that it proved the defendant's intent, as well as a pattern of behavior wherein he "prepared and planned to meet minor males with a motive of enticing them into sexual relationships." Id. at 676.

The Utah Court of Appeals affirmed the trial court, but the Utah Supreme Court found that the evidence of prior bad acts was improperly admitted. Beginning with intent, the Court rejected the State's position that "the admissibility of prior misconduct evidence can[] be sustained under rule 404(b) on the mere basis of a defendant's not-guilty plea." Id. at 679. And because the defendant never contested intent at trial, the court reasoned that it was "difficult to characterize

the true purpose of the 404(b) evidence . . . as permissibly aimed at establishing . . . intent.” Id. at 680. The court reasoned that it would be difficult to imagine a jury concluding the *actus reus* occurred but with innocent intent. *Id.* While the State was under no obligation to stipulate in a manner that would inhibit its ability to present a compelling narrative, the evidence had no legitimate narrative value, and was “not plausibly linked to any charged conduct.” Id. at 680-81. The court concluded the testimony was not admissible to prove intent. Id. at 681.

In the present case, the disputed issue is whether a murder occurred, not the intent behind an alleged murder. There has been no claim that MacNeill caused Michele’s death, but did not intend to, and therefore, is not guilty. Anna’s testimony about MacNeill allegedly killing or talking about killing his mother, brother, father, patients, societal riffraff has less no more connection to the subject of trial than prior sexual abuse of 18 year olds did at the trial for sexual abuse of a 12 year in the *Verde* case. Similar to *Verde*, this Court must exclude the State’s proposed testimony from Anna regarding MacNeill’s alleged bad acts.

Regarding the exception for “plan” to commit similar crimes, the *Verde* Court held that the prior bad act evidence was not relevant because there was “no suggestion of a prior, conscious resolve on [the defendant’s] part to formulate an overarching grand design encompassing both the charged and uncharged offenses.” Id. at 683. Furthermore, because the alleged past victims were adults, the Court reasoned that the evidence “only weakly suggest[ed] a plan, while simultaneously “strongly suggest[ing] to the jury . . . [that the defendant] acted in conformity with the bad character implied by his prior acts.” Id. Thus, because the evidence posed “an untenable

risk of confusing jurors as to the real purpose for which the evidence was offered and of swaying jurors to base a verdict on the strong inference of action in conformity with bad character,” the Utah Supreme Court concluded that exclusion was necessary to ensure the essential protection provided by rule 404(b). Id.

In the present case, none of Anna’s testimony is even remotely connected to any sort of “plan to kill Michele.” Even if Anna Osborne’s testimony alleging MacNeill had attempted to kill his mother when he was 8 years old, and had killed his brother (even though it is known that his brother died in New Jersey while MacNeill was in California) and had attempted to kill his daughter Giselle in the Ukraine, Anna, and others, Anna’s testimony does not manifest any overarching plan or design to kill Michele along with the others in Anna’s visions. Admitting testimony from Anna would serve no real purpose other than to present MacNeill as a person of bad character and leading the jury to conclude that he acted in conformity with that bad character and must have killed Michele.

MacNeill respectfully requests the Court to enter an order preventing the prosecution from eliciting irrelevant testimony from Anna regarding Anna’s uncorroborated perception of MacNeill’s alleged bad acts of either killing or attempting to kill or talking about killing or attempting to kill other people.

B. Any Probative Value From Anna’s Testimony Is Substantially Outweighed by the Risk of Unfair Prejudice, Confusing the Issues, and Misleading the Jury.

“Even if evidence of other crimes is probative of a particular element of a crime and is not

offered merely to show criminal predisposition, such evidence is not automatically admissible.” State v. Shickles, 760 P.2d 291, 295 (Utah 1988), *abrogated on other grounds*, State v. Doporto, 935 P.2d 484 (Utah 1997). Thus, this Court may exclude evidence of prior misconduct “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury.” Utah R. Evid. 403.

Further, “before similar ‘bad acts’ may be admitted against an individual, there must be reasonable indication in the record that the defendant was in fact a party to the bad acts sought to be brought in against him.” Cardall, 885 F.2d at 671.

In the present case, there is no reasonable indication that MacNeill was in fact a party to the alleged murders or attempted murders Anna has conjured up in her mind which the State seeks to submit to the jury. The communication between Anna and the UCAO investigators is replete with information leading to the conclusion that Anna’s assertions of fact are not reality based, but are products of her claimed supernatural powers. The UCAO cannot produce a shred of evidence to suggest MacNeill allegedly attempted to kill his mother, killed his brother, killed his father, killed his patients or attempted to kill or killed any of the people Anna discusses. MacNeill’s mother is still alive. MacNeill’s sister, who supposedly saved her mother when 8 year old MacNeill supposedly tried to kill her, is still alive and has told the UCAO that the allegations that MacNeill attempted to kill her mother and brother are not true. The allegations that MacNeill killed his father were likely unintentionally planted by the UCAO in Anna’s mind.

Notably absent from Anna’s voluminous murderous is any alleged statement by MacNeill

that he wanted to or intended to kill Michele. There is virtually no probative value to the testimony of Anna Osborne.

Any probative value of Anna's testimony is substantially outweighed by its prejudicial effect, will confuse the jury, and will lead to a presentation of all of the bizarre behaviors and statements that demonstrate Anna's lack of credibility. At the end of the preliminary hearing, this Court declared Anna to lack credibility which must lead to the conclusion that her testimony is very low on the threshold of having any probative value. Accordingly, the prejudicial effect of Anna's inflammatory beliefs of MacNeill being a serial killer and engaging in numerous murders and attempted murders in furtherance of satanic rituals must be deemed to substantially outweigh any probative value her testimony could be claimed to have. The time that MacNeill would have to spend at trial to disprove Anna's assertions would also be prejudicial by bringing undue attention to her testimony and at least make the jury wonder if MacNeill did the things Anna alleges and acted in conformity with those prior bad acts in relation to Michele—this inevitable line of thinking by jurors is exactly the type scenario Rules 403 & 404 are intended to prohibit.

Any probative value of Anna's testimony is diminished by the fact that she cannot distinguish between reality and her psychic visions or the personality that is speaking. Anna's lack of reality based memory is illustrated in the story she told investigators over a long period of time about a plot between MacNeill and her ex-husband, Bek, to kill her. After multiple, detailed explanations of the plot, one day she simply reported that it was not true, and asked investigators to disregard the accusation. On another occasion, she changed her story, to adopt the suggestion

by an investigator that MacNeill had killed his father. On another occasion, she told a story that MacNeill and Bek conspired to go to the Ukraine to kill Giselle (Giselle did not go to the Ukraine until July of 2007—about a year and a half after Anna and Martin ceased communicating and two plus years after Bek had left Utah). The story was significant enough to the UCAO investigators that it was included in their report submitted to Dr. Perper. Anna subsequently denied having ever told the prosecutors this story. The most likely resolution of the conflict is that one of Anna's personalities told the prosecution the stories, and another personality subsequently denied knowledge of the stories.

Any testimony from Anna would have no probative value, and to the extent it did, it would be substantially outweighed by the prejudicial effect, confusion of the jury, and unduly expanding the trial to address Anna's lack of credibility. Furthermore, MacNeill would almost certainly be denied his right to confront and cross examine Anna because he would have no way to control which voice or personality is speaking from the witness stand.

Anna's admitted dissociative personality disorder, her claimed supernatural ability to communicate telepathically, her ability to see things through an apparent psychic medium she refers to as "aether," and her ability to experience the sins of her partners in sexual intercourse render it impossible for either the prosecution or defense to establish whether any of Anna's testimony is based on actual events or imagined or divined circumstances.

The probative value of Anna's statements is also diminished by the fact that none of Anna's voluminous writings, contemporaneous in time with the alleged bad acts she claims were

committed or stated by MacNeill, document or even refer to MacNeill having said that he attempted to kill his mother, brother, father, patients, etc. The lack of contemporaneous documentation of MacNeill's alleged bad acts when Anna was writing volumes of information supports the fact that she subsequently imagined or divined the supposed bad acts after her relationship with MacNeill ended.

Anna is obsessed with serial killers. She has dreamed of them falling in love with her and has written to at least one serial killer. She thinks the JAMA article, "It's over Debbie," is about a serial killer, although it is really meant to question the ethics of euthanasia. Her belief and desire that MacNeill be a serial killer is part of her fantasy world.

"Evidence is unfairly prejudicial if it has a tendency to influence the outcome of the trial by improper means, or if it appeals to the jury's sympathies, or arouses its sense of horror, provokes its instinct to punish or otherwise causes a jury to base its decision on something other than the established propositions of the case." State v. Burk, 839 P.2d 880, 883 (Utah App. 1992). Admitting Anna's testimony of her various allegations of MacNeill's bad acts or statements about bad acts unrelated to Michele's death would be unfairly prejudicial to MacNeill, and any probative value of Anna's testimony would be substantially outweighed by the prejudicial effect of her incredible testimony.

II. CONCLUSION

For a statement of a party opponent to even be subjected to the scrutiny of Rules 402, 403 & 404, the Court would have to determine that there is a basis to conclude that a party actually

made the statement. See UTAH. R. EVID. 801(d)(2)(A) (requiring an admission of an opposing party to have *actually been made by that party*). As set forth above, it is likely that MacNeill did not even make the statements or do the acts that Anna claims, but rather, that the statements or acts are products of Anna's mental illnesses and beliefs in having supernatural powers. Regardless of the source of Anna's statements about MacNeill's various claimed acts from killings to attempted killings, to writing a famous article in the Journal of American Medical Association (JAMA), all of Anna's testimony is inherently bad act evidence. If Anna's testimony of alleged bad acts of MacNeill were admitted, it would have an overriding purpose of implying to the jury that MacNeill acted in conformity with prior bad acts. This purpose is expressly prohibited by Rule 404.

Furthermore, whereas the Court has already deemed Anna's testimony incredible after the preliminary hearing, the obvious prejudicial effect of presenting evidence at MacNeill's murder trial that he allegedly killed or talked of killing or attempting to kill others would be very prejudicial as improper character evidence, and would substantially outweigh any potential legitimate probative value. For the forgoing reasons, MacNeill respectfully requests this Court to prohibit Anna Osborne Walthall from testifying about any prior bad acts or statements about bad acts purportedly done or made by MacNeill.

Submitted this 26 day of July, 2013.


Randall K. Spencer
Fillmore Spencer LLC

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered by Email and Mail, the forgoing

Memorandum in Support of Motion to Exclude Anna Osborne to:

Chad Grunander
Sam Pead
Jared Perkins
Deputy Utah County Attorney
100 East Center, Suite 2100
Provo, Utah 84606
Email:

Dated this 26 day of July, 2013.



EXHIBIT 1

From: dusty rhodes <usedlamps[REDACTED]>

Date: January 4, 2006 1:52:03 PM CST

To: usedlamps[REDACTED]

Subject: **dream-probably of no interest to you, but non the less, recorded.**

I dreamed I was hitch hiking around the country and I had caught a ride with this trucker. I slept with him but I had moved on. I was seeing another guy who was also a trucker I'd caught a ride with. We were at a place where we were staying for a while, although we were very transient. I was on a big purple motorcycle that I was having a problem keeping up for some reason. So some clean cut nice guy ran up to help me keep it up. Shari was going to get some help so I told her to take my bike. Even though she didn't know how to ride, she agreed and ran around a corner. In a matter of seconds, I see her on the back of my white motorcycle, some dude in a black leather jacket was driving. I told the clean cut guy that he'd better get out of there. I was afraid for his safety. Then I see an overview--my self in the dream does not know and could not see- I saw in my cabin, my boyfriend walks in and sits down on the bed. I also see that the other trucker guy I was talking about is sitting quietly in a recliner- he had been waiting for me. Thinking he had been unobserved, he took a black cloth and began tying tying it around his face. I realized immediately that he'd followed me around the country (stalker) and was here to brutally rape and murder me, as a serial killer who had made the national news, had been doing. Then, just as he was about to attack my boyfriend, my boyfriend pulled out a black cloth and put it on, pulled out a gun and shot the guy in the chair. Then he sat on the bed and scooted up to the headboard and put the gun to his head and I realized that he was, indeed, the serial killer who had made the news. His original intention was to rape and kill me, but he had fallen in love with me and knew that his "demons" would win if he stayed alive and he didn't want to kill me. I didn't want to see him kill himself so I ran out of the room. I was then with some other people and my other part was looking at a black dress of mine, and talking to shari and stacy. The part of me who knows about the guys kept trying to suggest that my black dress had blood on it. I wanted to tell the rest of myself about what had happened. But the other part of myself saw the red on my dress and thought it was an intentionally printed bow. I thought, "I've never noticed that before!!! The other part of myself had me feel it to see that it was wet. The unknowing part felt of it and thought it was cold. Then I woke up.

[Faint, illegible handwritten text, possibly a signature or date, located at the bottom of the page.]

EXHIBIT 2

Dear David,

Hi. Just to give you a mental image, I'm a 44 yr old white female, mother of two boys, 11 and 13, and though I stay home now, I have done business for many years and own a nursing home. After a 3 year break from a bad 13 year marriage, I am remarried to a man I knew in my youth (he was my youth pastor... and we've been married for 2 years). He sells commercial insurance and we pastor a small church in Ashdown, AR. I love Jesus because He loves me. He snatched me out of the Devil's mouth when I was mostly dead. I literally saw the devil coming to kill me...he was tired of doing damage control and he HATED the deliverance minister who was praying with me at the time. Just before Satan reached me, Jesus stepped in front of me from out of NOWHERE and said, "No." (I don't know who was more shocked...me or the Devil.) Satan shouted, "She's mine!!" Jesus replied, "I redeemed her." It's a story I love to tell. Though I won't get into all the details right now, I assure you I will never forget the sniveling idiot Satan became when he stood before my Redeemer. On that day, Jesus washed my hands in His precious blood and as He did, Satan shrieked in pain as his hands and arms burned with heavenly fire. The mental anguish and torment caused by that blood drove Satan to look for someone to cry out to for help...and he instantly realized that the only One strong enough to help him was the very One he stood against. Satan was not even a worthy opponent for my Lord.

So....I hope you are well and at peace, just as I am. I'm so very glad I heard about you and what Jesus has done in your life. I watched the Son of Hope video online and my hope was renewed. I'm believing for the salvation of a serial killer who is currently in prison for ID theft, but who will be tried for murder before the year is over. I sent you something about how I came to hear

about you (I don't remember what I sent) through your contact at ariseandshine.org. It was probably too messy for you to make much sense of, but I will write as I'm able, and give you the whole scoop.

First things first...my friend, Martin. He killed his mother when he was 8 by secretly dissolving a truckload of pills in beer and pouring it into his drunken prostitute mother. When others discovered the woman was not breathing, she was resuscitated by CPR and rushed to a hospital. Martin suggested that it was a suicide attempt and no one suspected foul play...not even his mother. In his teens, he killed his father...again, he claimed he discovered his father's suicide and no foul play was suspected. One of his brothers was a cutter...Martin found him bleeding and drowned him in the tub...no foul play suspected. He had 6 siblings...all but 2 died by "suicide," the remaining two by "drug overdose"...how many of those Martin played a part in, I do not know. He recently killed his wife...drugged her and then drowned her in the bathtub. Though he practiced as a physician and an attorney for many years, it was recently discovered that his credentials were falsified. He intentionally killed many people through his medical practice...to rid society of riffraff. He told me he was afraid he would have to kill his daughter. He has raped many women. He is a stalker. He is sick. Broken.

2 He worked as the Medical Director of a medspa I opened in Utah. I was going through a very nasty divorce (ex-finally went to prison for firearms violations) with absolutely no support system when Doctor stepped in to console me. Oh, brother! Through my sexual connection with him, I experienced the evil of his deeds without actually participating in his crimes. And you know how the devil does...he feeds you enough to reel you in, but once you're his, he doesn't take care of you at all...just sucks the life out of

you until there's nothing left but death. That's where I was when I told Jesus I was ready to come home...and He snatched me out of the fire, SHAMED my captor before my very eyes, then passionately and shamelessly pursued my heart IN PLAIN SIGHT OF THE GENERAL PUBLIC (like a prince showering a new princess with flowers, gifts of every kind, privileges, and prestige...in front of the entire kingdom). Again, this is a story I love to tell...but time prohibits telling all the wonderful details. And I know, by the way you read Palms in the video, that He has Championed your heart, too.

But in my rejoicing, I remembered that I was not broken and bloodied on the battlefield alone. Jesus!! That little boy...shot down and mangled before he even had a chance to become an adult! We can't leave him there. Jesus, You have given, and given, and given to me! You have surprised me with things too wonderful for me to even think up to ask for! But there's something I want so badly that I'm asking You to secure it as my inheritance....

NOT
Biblical
?
Honestly, I am powerless against my compassion for Martin. I wish that I could effectively communicate my wrestling and determination over this man. But it sounds CRAZY. It feels crazy. But I'm just not gonna let the same Devil who tried to kill me, have this manchild. I can't save him, but I can attach myself to him so that if the Devil takes one of us, he has to take both of us...and he CAN'T TAKE ME!!! You see, I found this dying child... and since he was abandoned and had no one to care for him, I adopted him and now I cover him just as if I'd born him. He's my child. It's spiritually legal. I have parental rights. It is my legal right to claim my children in the kingdom of God. (Did you realize Jesus was adopted? ...Adoption was God's plan A.) I hope all that doesn't throw you for a loop...but if it does, I hope you at least

enjoy the ride :)

When I heard how Jesus melted your heart, my imagination was set ablaze by hope and my faith was renewed. Now, David Berkowitz, I ask in earnestness for your help. I don't even know what to ask of you. All I know is that God takes our downfall and makes it our ministry. The blood that was shed by the Son of Sam was used for the work of evil which reached well beyond the boundaries of New York City. So naturally, the authority God granted to the Son of Hope extends well beyond any influence Son of Sam's sacrifice had. I'm asking that you would extend the authority God gave you for your ministry, to minister to my son/friend, Martin Macneill. I don't think it's any coincidence that God calls Texarkana (where I live and where the FBOP "randomly" sent Martin for incarceration...a 35 hour drive from where his crimes were committed in Utah), "Hope." God calls it Hope.

I believe with my whole heart that Martin's victims were occult blood sacrifices, (BTW, Martin's only son...a 25 yrs old law student, committed suicide four months ago after Martin went to prison.) and that when Martin is washed in the blood of Jesus, that blood will burn a huge hole in Satan's web...that occult victims will be released from the trap...that occult leaders who were connected to Martin by their use of blood attained through his crimes will be violently shaken, dislodged, exposed, and brought to justice and repentance...that the established pathways used for transportation/communication/transmission of evil related to or powered by his bloodshed will be overwhelmed by the force of his conversion to righteousness and that rather than collapsing, those pathways will be sanctified and hidden by God to transport/communicate/transmit light and life deep into the heart of enemy territory. I pray and believe that these pathways will be cleared and then connected to others like it all across the nation, to serve

If Don't understand
this at all.

as a net for fishers of men... a conduit for communication and for transportation of people and resources in the kingdom of Light. ... You know, just like you. :)

I know this is all a lot...and so easy to write about. Maybe it just sounds like a fantasy. And to imagine that it will all happen tomorrow and/or with the ease of flipping a switch IS fantasy. But I hear the Lord talking about these things He's going to do, and I'm hoping to be a part of it. I'm looking for a place to plug in...to join up. And I'm looking for some help for my friend.

So will you help us? Will you share your vision with me? What can I stand with you for?

David, I'm so proud of you. You are like a city set on a hill...salt and light in the world. The courage and humility you exhibited in the Son of Hope video inspired me. You presented such an authentic apology...such sincere remorse in front of a world of cynics...without asking for anything in return...and to have witnesses who can vouch for the transformation of your character.... Man! What a testimony! If I never hear a word from you (though I hope I do), you have made a difference in my life, in Martin's life, and many other lives. I thank you.

Blessings,

Anna Osborne Walthall

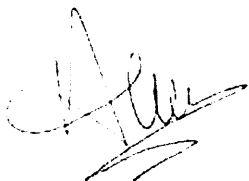


EXHIBIT 3

Jeff Robinson - Poor Ada

From: anna osborne [REDACTED]
To: Jeff Robinson [REDACTED]
Date: 5/21/2012 11:10 PM
Subject: Poor Ada

This is sickening. You know I mentioned those "stock moves" that Martin cycles through at every fork in the road? Well, here's one of them: Let a child witness your alibi.

Bek told me on that night in California that he and the boys were going to play in the woods the next day. I understand now that Martin was supposed to kill me with the gun in Bek's truck while Bek and the boys were hiking, and when the boys came back they would discover my body.

I believe that "template" goes back to Martin killing his mom (except the resuscitation) ...emergency workers asked him what had happened to her. He said she'd tried to commit suicide and everybody believed him, including his mother, once she sobered up. He was 8.

I'm sorry that I'm not very concise. It is just so heavy.... I've seen many of these themes...but I've never seen this one before and it reminds me of the way death's breath feels on the back of my neck.

BTW, when I was talking to you today I forgot that in my last exchange with Bek, he made a veiled threat toward me. March 23. Once he was angry (I called him a deadbeat...in a very Christianly way, of course! lol.), he asked if I'd resolved my issues with MPD and paranoia. When I wasn't disturbed by that, he texted, "how is dr. Martin? You been visiting your old friend? Still afraid or were you just trying to get attention?" Not knowing how to respond, I sent him a smiley face. He answered, "That's a terrible thought. Wish I never had the image of you smiling or otherwise in my head. Awful thing." Terry doesn't know Bek and didn't perceive any violence in the exchange, but it felt very threatening to me. Why else would he bring up Martin except to imply that Martin would come after me again?

Please let me know either right before or right after you have contact with Bek. He's gonna be sooooo ANGRY...and I just can't forget who he is and what he's capable of.

--- On Mon, 5/21/12, anna osborne [REDACTED] wrote:

From: anna osborne [REDACTED]
 Subject: Re: maybe nothing....
 To: "Jeff Robinson" [REDACTED]
 Date: Monday, May 21, 2012, 6:21 PM

Oh my goodness! It is very difficult for me to look again at the horrible, HORRIBLE HORRIBLE things I've experienced. My understanding continues to broaden....

Sitting here in my office, I read about a text I'd sent to Martin saying that the devil has blue eyes.... A little while later, though I'd not read any references to it, I saw a mental video of the time I sat with Ulugbek in the little cottage he'd rented in the mountains of California, kids in the next room...I was trapped. My rental car was disabled. There was violence in the air all around me, and bullets visible in Bek's truck. no cell service, no other houses for miiiiiles. The nearest small town was 30 minutes away...but it was Saturday evening and no car rental or tow truck until Monday morning. The next closest tow truck was 2.5 hours away at the San Francisco airport...but they couldn't get to me and back before closing. Ugh! I had to spend the night. I can't even hardly finish the story. It sickens me. Bek, seeing that the plan was working, smiled and said I'd have to stay. (He had a black eye and looked like pure evil) He sat down on the couch beside me, put his arm around me, and told me that he'd made a deal with the devil. Now I'm understanding that devil was Martin...who was supposed to finish his end of the deal before Monday morning. But I'd scheduled a tow truck from San Francisco to pick me up at 6am Sunday morning. Bek hadn't anticipated my action and couldn't contact Martin in order to change the plan before I was gone.

Hhhhh.... I'm telling you that's what happened. I can probably see it written in my stuff now that I know what was happening. Ohhh! I dislike this project! And I know this isn't directly related to what you are looking for. It will never be proof about Michele...but it can show you the nature of their agreement.

I didn't forget what you asked for. I will get it to you.

Ok. I did forget what you asked for. A current pic of Bek, the recording and transcript of conversations with him...what else?

The thing I reeeally want to send you is a list of the themes that showed up in Bek's thought and actions after he partnered with Martin. The defaults Martin developed and employed repeatedly through the years don't look like Bek, but Bek used them...which makes me know the two were in kahoots. (What even is that word? Kahoots.) Anyway, it will take me a bit of time to develop that list...because I have to review lots of information, but it speaks more loudly than words.

Blessings,

Anna

--- On Mon, 5/21/12, Jeff Robinson [REDACTED] wrote:

From: Jeff Robinson [REDACTED]
 Subject: Re: maybe nothing....
 To: "anna osborne" [REDACTED]
 Date: Monday, May 21, 2012, 12:36 PM

Anna,

You are right, I had the wrong number! Sorry about that. I will call in about two hours if that is ok.

Jeff Robinson - Re: Bek & Martin

From: anna osborne [REDACTED]
To: Jeff Robinson [REDACTED]
Date: 5/31/2012 3:39 PM
Subject: Re: Bek & Martin

The journal was evidence in the trial that put him in prison...so that stamp was (I guess) what they did to enter it into evidence. I had to BEG to get it from them. I didn't see it until after he was sentenced. I think that Bek's plan to kill Clive originated in his first journal. IDK. It's been a long time since I've looked at it, so I'll have to dig it all up. I have an incredibly elaborate system for burying things...and it's working beautifully right now!

I think Bek kept a journal because....he's stupid? I'm sorry, Jeff. I don't know. I'm just super bent out of shape right now, having DID issues. I'm not processing at all. I'll get back with you when I can. Sorry.

--- On Thu, 5/31/12, Jeff Robinson [REDACTED] wrote:

From: Jeff Robinson [REDACTED]
 Subject: Bek & Martin
 To: "anna osborne" [REDACTED]
 Cc: "Doug Witney" [REDACTED]
 Date: Thursday, May 31, 2012, 3:28 PM

Anna,
 I just finished reading the Bek journal entries that you had on your computer hard drive. I can see why you would be fearful of him. I do have a couple of questions. I was hoping to find some conspiracy between Bek and Martin to kill Cleve and Giselle. I didn't see it. Do you know where this came from? I sent Doug an email too asking him. As you pointed out, there were some pages missing from the journal. Did it appear they were ripped out? Do you have any idea why Bek kept a journal? I also noticed that the journal pages appear to be beta stamped. Is that something you put on the page or Bek?

Thanks for taking the time to answer the questions above. I got quite the view into Bek's life!

Jeff

>>> On 5/21/2012 at 11:10 PM, in message <4FBB1FDA.2E1 : 22 : 29409>, anna osborne [REDACTED] wrote:

This is sickening. You know I mentioned those "stock moves" that Martin cycles through at every fork in the road? Well, here's one of them: Let a child witness your alibi.

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Jeff Robinson - Re: Bek & Martin

From: anna osborne [REDACTED]
To: Jeff Robinson [REDACTED]
Date: 6/4/2012 12:00 AM
Subject: Re: Bek & Martin

Hey Jeff-

I didn't realize I had Bek's journal entries on my hard drive. As I said, Bek had 2 journals. I found the original journal that was not entered into evidence last time (dated 09/19/04 -01/02/05 with one page ripped out that looked like it was used as scratch paper because it was surrounded by blank pages)...and the copy of the second journal that the DA gave me after Bek's sentencing (dated 01/08/05 - 06/11/08). I never had the original of that second one. It appears to me that it starts with "00130" which is the front cover, and goes to "00270." I've been looking over both journals and have many thoughts..... Bek began journaling at the suggestion of his counselor...to help him get in touch with his feelings. I'm thinking it was reeeally effective. I'm sure his counselor would be proud.

I've never heard of anyone's intention to kill Giselle. I remember Doug asking me very early in the investigation if Bek and Martin had some kind of you-scratch-my-back-I'll-scratch-yours deal. I said absolutely not, because neither was capable of such a horrible thing. I also remember Martin asking me if I wanted him to kill Bek. After I found out Michele was dead, I eventually concluded that Martin had asked me about killing Bek in order to strike up a deal to get my assistance to help him kill Michele. I just assumed Martin asked Bek the same about Clive. And then there's the page in the journal where Bek's writing about how "we" are gonna blah, blah, blah. Then he says he's talked to Doc and he's ready, or something along those lines.

On pg 147 the first line says "Mars. Be my guide." He's talking crazy...gods..."I am that I am"...calling on demons to assist him...He could have been talking about "Martin the Martian," as kids called him. I also see on page 150 that Bek has come up with a plan that has far fewer consequences but can bring a lot ore results back...and I see on Bek's phone bill that he talked to Martin that day. Also pg 160, 4th line: "OK, I found someone but not really." (because they can't do it right away) I see in Bek's phone records that he spoke to Martin that day, also. The conversations were not long, but if you notice on page 264, there's a list of reminders which includes getting a burner phone. That looks like a list that he probably thumbed through and stuck in the back part of the book for easy referral rather than something he came up with in the course of writing his daily crap. In other words, I believe he had already obtained a burner phone before he reached the last date included in this journal. I suspect that on these dates I've included, he called Martin to get his attention, and then they discussed things more at length on the burner phone. Don't know it...just a guess.

You also asked me earlier if Bek and Martin were actually friends.... Page 135 in the journal says, "My friends" and Martin is definitely in the list. (Calls him Mart, and Doc, and D) I saw another "My friends" list somewhere later. The missing elements were Sona employees. Martin was also missing off that list, but I think that their plan was already in operation, and so they were certainly more friendly than they had been when this first list was written.

I've noticed at least two times when Bek was staying with the Macneill's. He also made a reference to wishing to hang out with Damian so he could find a hottie to hang around with. I think that seems pretty personal if you want to hang with somebody's kid. Whatever.

Anyway, I primarily wanted to say that I'm looking and remembering...back on track with ya so you're welcome to shoot me any questions you think I may be able to contribute something on. I'm in a much better place to give them a shot.

I also want to say that I think I was wrong about Martin being in San Francisco when Bek debilitated my car and trapped me on that mountain. I was beside myself and had no grounds on which to base my statement. Martin's phone records would be the only available confirmation.... But I'm asking that you strike those statements. They were so young!! I like to ponder points...blah blah blah.

I hope I didn't make a mess of all this here at bedtime. I'll get back with you tomorrow.

Blessings-

Anna

--- On Thu, 5/31/12, Jeff Robinson [REDACTED] wrote:

From: Jeff Robinson [REDACTED]
 Subject: Re: Bek & Martin
 To: "anna osborne" [REDACTED]
 Date: Thursday, May 31, 2012, 4:54 PM

No problem Anna! I wish you the best. I hope you feel better soon.

>>> On 5/31/2012 at 3:39 PM, in message <4FC7E521.12E : 15 : 8494>, anna osborne [REDACTED] wrote:

The journal was evidence in the trial that put him in prison...so that stamp was (I guess) what they did to enter it into evidence. I had to BEG to get it from them. I didn't see it until after he was sentenced. I think that Bek's plan to kill Clive originated in his first journal. IDK. It's been a long time since I've looked at it, so I'll have to dig it all up. I have an incredibly elaborate system for burying things...and it's working beautifully right now!

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