

Randall K. Spencer (6992)
FILLMORE, SPENCER LLC
Attorneys for Defendant
3301 North University Avenue
Provo, Utah 84604
Tel: (801) 426-8200
Fax: (801) 426-8208
Email: rspencer@fslaw.com

Susanne Gustin (5962)
Attorney at Law
WELLS FARGO CENTER
299 South Main Street, Suite 1300
Salt Lake City, UT 84111
Tel: (801) 535-4343; (801) 243-2814
Fax: 801-536-3300
Email: defendmenow@aol.com

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

STATE OF UTAH,	Plaintiff,	MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO PREVENT PROSECUTION FROM INTRODUCING EVIDENCE RELATED TO PROHIBITION OF CERTAIN GUESTS AT MICHELE MACNEILL'S FUNERAL CASE NO. 121402323 JUDGE SAMUEL D. MCVEY
vs.		
MARTIN J. MACNEILL,	Defendant.	

MARTIN MACNEILL, by and through his counsel, RANDALL K. SPENCER and
SUSANNE GUSTIN, submits the following memorandum of points and authorities in support of

his Motion in Limine to Prevent Prosecution from Introducing Evidence Related to Prohibition of Certain Guests at Michele MacNeill's Funeral.

STATEMENT OF FACTS

1. During the preliminary hearing in this matter, the Utah County Attorney's Office (hereinafter, UCAO) solicited testimony from Alexis MacNeill regarding Martin MacNeill's alleged refusal to invite certain members of Michele MacNeill's family to her funeral.
2. Alexis testified that Michele's mother and sister, Linda, were present, and some cousins, but other siblings and family members were not invited. *See* Prelim. Trn. at 767.
3. Alexis further testified that: "[MacNeill] said that was the one good thing about my mother being dead is not having to deal with her family. He said that he—they're not allowed in, in the funeral. And that he's gonna have bouncers at the door if they tried to come in." *Id.* at 768.
4. Alexis failed to disclose that the family members that were not welcome at the funeral were family members that had been estranged from the MacNeills due to two cousins sexually abusing Damian MacNeill when he was a young child.
5. Obviously, MacNeill did not prohibit all of Michele's family from attending the funeral because Alexis testified that Michele's mother, sister Linda, and certain cousins did attend.
6. The circumstances which led to a part of Michele's family not being welcome at the funeral are well known by members of the MacNeill family, Salem Stake President Stanley Green, and others.

ARGUMENT

I. TESTIMONY REGARDING MACNEILL ALLEGEDLY PROHIBITING CERTAIN FAMILY MEMBERS FROM THE FUNERAL IS IRRELEVANT

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. The MacNeill's daughters' assertion that MacNeill prohibited certain family members from attending Michele's funeral can only potentially be relevant as an alleged bad act of MacNeill. 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). Whereas MacNeill admittedly allowed Michele's mother, sister, Linda Cluff, and selected cousins to come to the funeral without objection, MacNeill cannot fathom any sort of plan related to the UCAO's theory of homicide that would include allowing some family members to come to the funeral and but not others. MacNeill's alleged

exclusion of certain family members from the funeral is irrelevant, and should be excluded from admission at trial.

II. TESTIMONY REGARDING MACNEILL ALLEGEDLY PROHIBITING CERTAIN FAMILY MEMBERS FROM THE FUNERAL IS AN INADMISSIBLE BAD ACT

The only potential relevance to testimony regarding MacNeill excluding certain family members from the funeral is that such conduct is a “bad act” relating to his character. Evidence of other crimes, wrongs or acts, is generally inadmissible. Rule 404(b) of the Utah Rules of Evidence. Bad acts that are unrelated to the charged offenses, are only admissible if they help prove, “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident.” URE 404(b)(2). MacNeill can’t imagine what theory the UCAO may assert for admissibility of MacNeill’s alleged exclusion of some family members from Michele’s funeral. Assuming that it happened, it is purely an inadmissible “other bad act.”

If the UCAO attempts to articulate some purpose for introduction of the funeral exclusion evidence, such purpose would be a ruse. In State v. Verde, 296 P.3d 673 (Utah 2012), the Utah Supreme Court held that the prosecution must actually identify a non-character purpose for admission of bad act evidence, and cannot simply rely on the fact that Defendant has pled not-guilty and generally assert that the other bad act evidence is admissible under 404(b). *Id.* at 679-80. In the present case, there is no exception applicable to MacNeill’s alleged bad act of not letting certain family members come to the funeral, and testimony regarding such should be excluded pursuant to Rule 404(b) of the Utah Rules of Evidence.

**III. TESTIMONY REGARDING MACNEILL ALLEGEDLY PROHIBITING
CERTAIN FAMILY MEMBERS FROM THE FUNERAL IS AN INADMISSIBLE
UNDER RULE 403 OF THE UTAH RULES OF EVIDENCE**

Even if there was some relevance to the funeral exclusion evidence, and even if there was some non-ruse exception allowing the funeral exclusion evidence in notwithstanding Rule 404(b), it is inadmissible pursuant to Rule 403 of the Utah Rules of Evidence.

URE 403 prohibits admission of evidence at trial when the “probative value is substantially outweighed by a danger of...unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” The probative value of evidence suggesting that MacNeill excluded some but not all of Michele’s family from her funeral is nil. Yet, the prejudice of painting MacNeill as having such bad character that he won’t even let certain family members come to Michele’s funeral is high. The prosecution’s true purpose is simply to convey to the jury that a person with a character such that he would exclude family members from a funeral is the type of character of a person that would kill another...

If the Court allows this testimony at trial, MacNeill will be forced to call witnesses to rebut the prejudicial inferences the prosecution seeks to create and establish the truth about why some were excluded from the funeral; this will needlessly confuse the issues and cause unnecessary delay, and will be highly prejudicial to MacNeill.

CONCLUSION

Testimony regarding the members of Michele’s family that were excluded from the funeral is irrelevant, is improper character evidence, and any probative value is substantially

outweighed by the danger of unfair prejudice and needlessly extending the length of trial.

MacNeill respectfully requests the Court to enter a motion in limine prohibiting the prosecution from eliciting testimony from witnesses relating to MacNeill allegedly excluding some of Michele's family from attending the funeral.

Dated this 26th Day of August, 2013.

Randall K. Spencer
Attorney at Law

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered by Email and Mail, the forgoing Motion to Prohibit Testimony Regarding Funeral Guests to:

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

Dated this 26th day of August, 2013.
