

ORIGINAL

FILED

02/06/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 19-0647

IN THE SUPREME COURT IN THE STATE OF MONTANA

No. DA 19-0647

IN THE MATTER OF:

CHILD ENDANGERMENT, DOMESTIC VIOLENCE, PROPERTY DAMAGE.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Twenty-First Judicial District Court, Ravalli County,
the Honorable Howard F. Recht, presiding.

Appearances:

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FEB 06 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Kevin R. Frost Appellee

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TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....2

APPELLANT ASKS THE COURT TO.....3

STATEMENT OF THE ISSUES.....4

STATEMENT OF THE CASE.....4

INTRODUCTION.....5

STATEMENT OF THE FACTS.....8

SUMMARY OF THE ARGUMENT.....17

ARGUMENT.....17

CONCLUSION.....29

CERTIFICATE OF COMPLIANCE.....31

TABLE OF AUTHORITIES CASES

State v. Ankeny, 391 Mont, 176 2018 MT 91 417 P.3d 275. (prior PFMA)

DA 15-0238, Id 12,13. (letters).....22,23,26

State v. Blaz, 2017 MT 164, 12, 388 Mont. 105, 398 P.3d 247. “illustrating a
pattern of conduct”.....22,26

State v. Daffin, 2017 MT 76, 15, 387 Mont. 154, 392 P.3d 150.....26

State v. Sweeney, 2000 MT 74, 299 Mont. 111, 999 P.2d, 296.....	21
State v. Weldy, 273 Mont. 68, 75 902 P.2d 1,5 (1995).....	21
State v. Sadowski, 247 Mont. 63, 72 805 P.2d 537, 542 (1991).....	21

OTHER AUTHORITIES

Imwinkelried, Uncharged Misconduct Evidence at 3:18, 101.....	21
Montana Law Review; you can't escape your past: <i>State v. Blaz</i> and the future of 404(b) Evidence in Montana. Britton Fraser, 2020, J.D. candidate at the Alexander Blewett III School of Law at the University of Montana.	
National Coalition Against Domestic Violence Statistics.....	4,5,6
Constitution of Montana--Article II--DECLARATION OF RIGHTS.....	30
Montana Code Annotated:	
Rule404(b)	17,26,27
Rule 406(b),(c)	13,15

THE APPELLANT ASKS THE COURT TO:

1. Reverse the summary judgment.
2. move to a jury trial.
3. Reverse the order of court costs.
4. Reopen criminal case.

STATEMENT FOR THE ISSUES PRESENTED FOR REVIEW

1. Whether the court erred in granting summary judgment.
2. Whether the court erred in not considering the Appelles prior arrest for PFMA on June 11,12, 2015, three weeks before boat shooting and other acts as evidence.
3. Whether the district court erred not considering the boat shooting and kidnapping is inextricably linked to prove “Frost’s” identity. Rule 404(b)
4. whether the district court erred excluding my counselor’s finding as inadmissible hearsay.
5. Whether the court erred in prematurely granting appellee to quash trespass, actual malice, and punitive damages because the appellant didn’t respond in time.
6. Whether the court erred in granting court costs

STATEMENT OF THE CASE

This case resulted from a woman trying to leave an abusive marriage. The divorce was about abuse and domestic violence Not an affair as “Frost” is implying. My marriage was also not good. Sherri and I were friends and we both were wanting divorces from long contentious marriages. Sherri Frost was getting a divorce

regardless if we were together or not, period. And me as well, both of our divorces have been a long time coming. We both confided in each other and became closer over the year of 2014 and our relationship didn't become serious until later on in 2014. Instead of a normal divorce, it turned into a reign of violence, violence with weapons, intimidation, stalking, property damage, child endangerment, parental alienation, aggravated kidnapping, and terror imposed by Kevin Frost. This violence, threats of violence and intimidation went on for approximately 2 plus years until Kevin Frost was incarcerated at the Montana State Prison on June 9, 2017.

INTRODUCTION

“This case is about Domestic Violence brought on by Kevin Frost, the Defendant in this case”.

This is a textbook domestic violence case. In this case “Frost’s” estranged wife (Sherri Frost) wanted to be divorced from him but was afraid to tell him because she knew he would try and kill her if she tried to leave. This is statistically the most dangerous time for women to leave an abusive and controlling marriage. The statistics are staggering. In 2015/2016 there was a 153% increase in domestic violence homicides in Montana. There are many times when innocent victims are brought into the abuser’s fit of rage, i.e. family, friends, neighbors, bystanders,

children, etc... This case is no different. My children and neighbors were put in harm's way because of "Frost's" rage when he shot my boat as a death threat to Sherri and I. Then he came back to my home to kidnap his estranged wife and kill her. He was "caught" when he came back to my home a second time and is now serving a 30-year sentence with 25 suspended 5 in prison for aggravated kidnapping and PFMA. When you read the National Coalition Against Domestic Violence Statistics, "Frost" meets all the criteria. (1) There was physical and emotional abuse throughout his marriage and his wife was afraid to leave. (2) when she tries to finally "leave" he goes into a rage and assaults his wife's father when he was trying to protect her from him. "Frost" was arrested for PFMA. (3) "Frost", continued his anger and control by alienating his wife's children from her. (4) "Frost" continued to intimidate his estranged wife by threatening phone calls and writing letters to family and friends. He was losing control. (5) "Frost" states in a letter that I am manipulating his wife and doomed his marriage (anger). (6) approximately two weeks after "Frost" wrote the letter, on 7/1/2015 the boat was shot two times between 5 and 6 am from approximately 200 yards (death threat, property damage). (7) the morning after the boat shooting "Frost" texted my little girl at 5:03 am. This was done to antagonize and intimidate me. This all happened

within three weeks from when “Frost’s” wife wanted a divorce. Ignoring the fact that “Frost” shot my boat and endangered my children because he was losing control of his estranged wife is going against all domestic violence statistics. The boat shooting is inextricably linked to the February 9th kidnapping as well as all the events that are cited in this case. (8) “Frost” continued after the boat shooting. He was “caught stalking” his wife by a neighbor around her mother’s home. (9) Days later “Frost” stabbed his wife’s tire with a knife at her mother’s home. (“Frost,” said he didn’t have anything to do with it and he didn’t think his son had anything to do with it. “Mastermind”).(10) the intimidation continued, threats, anger, stalking, alienating children, impropriety letters. (11) Ultimately when all of “Frost’s” attempts to control his wife and intimidate me as well failed, he left his home, came to my home where his estranged wife was staying. (how he knew she was staying there is unknown because she was staying at her mom’s as well, it’s called stalking) he was Armed with weapons, assaulted and kidnapped his wife from my home and was prepared to do me harm as well. Again he was caught this time and is now in prison. The statistics show that the presence of a gun in a domestic violence situation increases the risk of homicide by 500%. On 6/11/2015 “Frost” was in possession of a gun. The 7/1/2015 boat shooting involved a gun.

The 7/24/2015 tire stabbing involved a knife. The aggravated kidnapping on 2/9/2016 involved a gun, taser, and knife. In other words, my children, myself, Sherri Frost and the community are lucky that we were not harmed or killed by Kevin Frost and his rage. These events are not speculation, they are facts. Each one of these events involved Kevin Frost, his rage, domestic violence and are inextricably linked.

STATEMENT OF THE FACTS

The parties, in this case, were long-time friends. The issues with the parties began in 2007/2008 when I “caught” Kevin Frost the appellee in this case having an affair with my wife Kim Moore. They both admitted to the affair and we didn’t speak for almost two years after this. We started talking again because our children were friends and I (“Brian Moore” the appellant in this case) thought we could work through this for the kids sake. I did forgive but it doesn’t mean I condoned it. Our kids were happy to see each other again so we worked it out between the adults. It was uncomfortable, to say the least. To make a long story short my family and I moved out of state several times over the years we did things with the Frost family but it was never the same after what had happened. In 2013 my family and I moved to Minnesota. We moved back in July of 2014. When we moved back

Sherri and I started talking more in detail about what happened between Kevin and Kim's affair. We never talked about it in the past. Sherri and I started talking more and more, over the summer of 2014 when we took the kids to the lake to ski and swim. Time went on and Sherri and I became closer and ultimately we fell in love. We both were concerned about how this would play out with the kids and we knew Kevin and Kim would be upset when we told them about us. Sherri told me Kevin will kill her when she tells him. At the time I didn't believe her. I told her Kevin would be mad but wouldn't kill her. I have never been so wrong about someone in my life. I feel bad that I didn't listen to Sherri about Kevin. Sherri was afraid to tell Kevin so we put it off for a while. During this time Sherri wasn't feeling well. Around March of 2015, Sherri went to the doctor and found out she might have ovarian cancer. It was confirmed in April of 2015. We were all scared for Sherri. Sherri and I decided to postpone telling the family about us because of her cancer and upcoming surgery. We didn't want to cause any more stress and Sherri's health was most important. After Sherri's surgery, she went on chemotherapy. We both decided to tell the family about us after our oldest kids graduated from high school in June of 2015.

On **6/7/2015**, Sherri Frost said "Kevin told me to stay off that boat it makes him

look bad.” implying Sherri and I are having an affair on the boat. He was livid.

Id., page 8, *opposition for summary judgment*

This is the first three weeks after Sherri Frost separated from Kevin Frost. According to the National Coalition for Domestic Violence this is the most dangerous time for women to leave an abusive relationship.

On the night of **June 11, 2015.** *id.* 6, *opposition for summary judgment. Id.*, 3,

3-15 opposition of motion in limine. Kevin Frost found a text from me to Sherri

Frost. Sherri told Kevin that she was seeing me. Kevin went into a fit of rage. He

left his home armed with a gun. Sherri Frost called and warned my family and me

about Kevin coming over to my home with a gun. One of Kevin’s friends Craig

Meyers also called me the same night and said Kevin has a gun. With this

information, I called the Sheriff to report this. In “Frost’s” fit of rage he went to see

my estranged wife at the hotel where she was staying to tell her about Sherri and I.

He enraged her so much that she drove to our home from the hotel and she threw

rocks at me and broke some things in the house. The Sheriff’s Dept was already

on their way to the home when this was going on because I called them earlier

about Kevin Frost coming over to my home with a gun. I told my kids to take our

truck and leave before Kevin Frost got there. On this night Kevin Frost also went

to Sherri Frost’s parents’ home unwelcome. In his rage, he attempted to show

them the text I sent to Sherri and I guess to try and convince them how horrible their daughter is. They were having none of it. They told Kevin to leave their home. He was so angry when he left they followed him to his home because they were worried about their daughter's safety. When Sherri's parents arrived at the "Frost" home where Sherri and the kids were. Sherri's dad (Noel Cook) came in between Sherri and Kevin when Kevin was aggressive towards Sherri. Kevin Frost attacked Noel and punched him multiple times. (Noel was 75 years old at the time with a pacemaker and heart issues). Kevin was well aware of this but punched Noel anyway. *Id.*, Exhibits 12,13. The Sheriff was called and Kevin Frost was arrested on this night for PFMA. Noel Cook dropped the charges only because he was afraid Kevin would retaliate and take it out on his daughter. This was a scary night for all of us. I am thankful that Noel is ok after being assaulted and no one was shot or killed on this night because there was a gun involved. It was an extremely violent night because of Kevin Frost and Kim Moore. *Id.*, pages 17-20 *opposition for summary judgment.. Exhibits 12,13.*

On **6/17/2015**, Kevin Frost was served divorce papers from Sherri Frost. Kevin was furious he was served on father's day weekend. I was worried about what Kevin might do when he was served divorce papers and if he was going to come

for me and Sherri with a gun because of what happened on 6/11/2015. Id., page 27,28 *opposition for summary judgment*.

On **6/18/2015**, Kevin Frost wrote a letter to Noel Cook and my mother Joanne Moore. Kevin also phoned my mother giving her his side of the story. Keep in mind that this was after the 6/11/2015 incident with a gun that my mother was apart of and the assault on Noel Cook. My mother hung up on Kevin with disgust. In the letter, Kevin went on to state how upset he was and that I was manipulating Sherri and that I have doomed his marriage. “Kevin Frost wrote this letter on the same day the mother of his children was at the hospital receiving chemotherapy for her ovarian cancer. This letter proves Kevin’s anger and disdain for Sherri, me, and family. Sherri, me and the kids were spending a lot of time at the lake on my boat throughout the summer of 2014. As I have stated many times in this case. Kevin Frost wanted me away from his estranged wife so he could get her alone. He knew if he put the boat out of commission we would be spending less time together. In his mind, I was taking Sherri to the lake and manipulating her. This letter was written weeks before the boat shooting. Id., page 27,28, Exhibit A-letters to “Noel Cook & Joanne Moore”, *opposition for summary judgment*.

On **6/27/2015**, Kevin Frost found out that I took Sherri Frost and his daughter to

the lake on my boat. Sherri was going through chemotherapy and wanted to go to the lake and relax with the kids. Dr orders relieve stress. We found out through the kids that Kevin was angry and he told his daughter to “stay off that boat!!!” This was days before the boat was shot. *Id.*, page 29, *opposition for summary judgment.*

On July 1, 2015, the boat and my children were shot at between 5am and 6 am.

There were two shots fired and two bullet holes in my boat. The path of the bullets was within feet to inches from my home. Not 50 feet as the opposing party claims. (see map). This was a death threat to Sherri and me from Kevin Frost. *Id.*,30, (see map Exhibit 1 map,boat/house pics), *opposition for summary judgement. Id.*, 3-15, *opposition for motion in limine. (Kevin said he was sleeping on this morning “not confirmed” Rule 406)*

On July 2, 2015, at **5:03** am Kevin Frost sent my 14-year-old a text calling me a deceitful liar, it upset my daughter. *Id.*, 6,7,10 Exhibit 7 *opposition for summary judgment. (Kevin was awake before 5 am this morning, Rule 406(b)(c) habit routine practice.)*

On July 24, 2015, Sherri’s tire was stabbed “early in the morning” it was dark and was right before Sherri went to work. This is also linked to the boat shooting and kidnapping. This happened at Sherri’s parents, where Sherri and I were staying at

the time. Kevin Frost was extremely upset I was staying at Sherri's parent's home.

Id., 7, 29,30, Exhibit 8, A-letters Rule 406 habit,*opposition for summary judgment.*

From **August through October 2015**. The threats and intimidation continued. i.e., phone calls, impropriety letters, alienation from our kids. Id., 30, 31, *opposition for summary judgment.*

On **October 22, 2015**. My divorce was finalized. The intimidation threats continued. Id., 31, *opposition for summary judgment.*

On **December 12, 2015**, Kevin Frost wrote a letter to Sherri's brother stating how upset he was that I was staying at Sherri's parents. This was five months after the boat shooting and tire stabbing. Again this shows Kevin Frost's "state of mind" towards Sherri myself and our families. Kevin assaults Sherri and Randy's dad and then to add insult to injury sends this letter to him. This is very strange and concerning behavior. Id., 32, 33, Exhibit A letters, *opposition for summary judgment.*

On **January 7, 2016**, Kevin Frost called Sherri Frost on her cell phone while I was driving her to work. It was around "6 to 6:30 am." Sherri had the phone call on the car speaker and I witnessed Kevin tell her she better take the first offer he sends down or he and his lawyer are prepared to put the kids on the stand. and he wasn't

being nice about it. Kevin also told Sherri that from here on out they will only communicate through their lawyers. *Id.*, 33,34, *opposition for summary judgment.* (*again Kevin is awake at 6 am same time the boat was shot. Habit Rule 406 (b)(c).*)

On February 9, 2016. Kevin Frost had enough his prior futile plans to get Sherri alone was not working and Sherri was not listening to him, Kevin in a final way came to my home as he did when he shot at my home into my boat. Kevin Kidnapped and assaulted Sherri Frost. Kevin was armed with weapons and he was prepared to harm me as well. We all thought Sherri was dead. I “caught” Kevin Kidnapping Sherri and called the Sheriff’s Dept. Kevin Frost did not turn himself in voluntarily, he knew he was being pursued by the Sheriff’s Dept. After holding Sherri captive for approximately 7 hours and knowing he was “caught” he turned himself in. This has everything to do with the boat shooting and endangerment to my kids. They are inextricably linked. *Id.*, 33-36, *opposition for summary judgment.* (Kevin Frost is awake 5 am or earlier, the same time the boat was shot, citing habit rule 406(b)(c), habit, routine.)

In July 2016. Five months after Kevin Frost was arrested for Aggravated Kidnapping, multiple other charges, \$500,000 bail, A 40-year prison sentence looming over his head. Kevin writes an impropriety letter to close friends of

Sherri's continuing to bash Sherri and me. He lies to them saying he did not have an affair with Kim Moore and saying he did not hit or threaten Sherri during the kidnapping. The kidnapping was all over the News and everyone in town knew about what Kevin did to Sherri. Id., 34, 35, *opposition for summary judgment*. The chain of events, in this case, are all without a doubt inextricably linked and they all involve Kevin Frost. Saying that Kevin Frost has nothing to do with the boat shooting is a slap in the face to my family and me. It is also a slap in the face to all domestic violence victims in this country. The chain of events, in this case, are textbook when women try to leave an abusive relationship. The blatant disregard for the events/domestic violence cycle of this case is not only puzzling it's unconscionable. There are no other suspects in this case. If the Sheriff's department would have recognized that the boat shooting is part of the domestic violence cycle and the fact that Kevin Frost was arrested for PFMA on 6/11/2015 three weeks prior to the boat shooting, served divorce papers on 6/17/2015 two weeks prior to boat shooting, sent a impropriety letter on 6/18/2015 to my mom and Sherri Frost's dad, threatened his daughter to "stay off that boat!, on or about 6/28/2015, And sent my wife a text saying "that boat is why all this happened and it's a kid magnet and they will be on it all summer with Brian!" I'm sure they

would have done a more thorough investigation. The boat shooting was/is part of the domestic violence cycle and is a continuation of Kevin Frost's rage.

SUMMARY OF ARGUMENT

The purpose of this lawsuit is to prove Kevin Frost shot my boat and endangered my children and neighbors in the process. I have brought forth all the evidence, in this case, to show "Frost's" intent, motive, knowledge, plan, and state of mind. Rule 404(b) to prove "Frost's" identity has been cited many times in this case. Every event cited "especially the February 9, 2016 kidnapping" is inextricably linked to and explanatory of the shooting. The boat shooting and kidnapping are so identical as to earmark them as the same perpetrator. see map Exhibit 1, citing *State v. Daffin Id.*, 38-40,42-44, *opposition for summary judgment*. Not linking all the criminal acts, wrongful acts, and acts, in this case, is a gross injustice to me, my family and community. Domestic violence is everybody's problem in this country.

ARGUMENT

DID THE DISTRICT COURT ERROR GRANTING SUMMARY JUDGEMENT TO DEFENDANT

As the district court stated, issues of negligence are not susceptible to summary judgment and are better determined at trial. I agree this whole case should be

determined at a jury trial. I have proven without a doubt that Kevin Frost had motive, intent, means, plan, and opportunity. Kevin Frost's aggravated kidnapping of Sherri Frost solidifies the identity of Kevin Frost to the boat shooting. "Frost's" alibi is weak at best and cannot be confirmed and is a disputed fact. "Frost's" identity is in dispute and is a genuine material fact and should preclude summary judgment. "Frost's" identity to the shooting was never established. This would be for a jury to come to inference on. When "Frost's" identity is established by a jury then all of the charges, in this case, fall into place. Stating that there is no circumstantial evidence is incorrect. The district court stated there is no circumstantial evidence, i.e no fingerprints, no DNA, no torn clothing, no shell casings. This may be true, However, it makes no difference, in this case, Kevin Frost has been to my home, he has been on my boat and he has hunted behind my house. The circumstantial evidence, in this case, is all other evidence i.e., intent, motive, identity, knowledge, plan, opportunity, means, letters, texts, witnesses, other crimes, acts, and wrongs. The district court stated there are other suspects. Again this is incorrect. If the Sheriff's department would have done a thorough investigation and interrogated all of us they would have come to the conclusion that Kevin Frost was the shooter, mastermind. Suspects: (1) first of all my

daughters have never shot a hi-powered rifle and they would never shoot at each other period they are out as the shooter. (2) My son would never shoot at his mother or sister's period so he is out as the shooter. (3) Sherri Frost's daughter has never shot a rifle to my knowledge and she would never shoot at my kids. (4) Sherri Frost's son would never shoot at my kids and he had shoulder problems and surgery in 2015, so he out as the shooter. (5) Sherri Frost was going through chemotherapy and would never shoot and my kids period. Sherri has a confirmed alibi. (6) I would never shoot at my kids or my own property. I have a confirmed alibi. (7) Kim Moore, I have known her for 25 years and she has never shot a hi-powered rifle. (8) Kevin Frost is the only suspect that meets all the criteria, motive, intent, means, opportunity, plan. he is a good shot with a rifle, he was in a rage about the divorce, his ego, he knows the area well, and he wanted Sherri and me to stop going to the lake on "that boat" with the kids, the February 9th kidnapping is almost identical in *modus operandi*. No matter what inference a jury comes to, "Frost" is involved in the boat shooting and is the cause of it. (i.e triggerman, mastermind, aiding and abetting). Stating that Kevin Frost has no involvement in the boat shooting is pure fantasy. all the events i.e criminal acts, acts, wrongs are "inextricably linked to, and explanatory of, the charged offense".

Kevin Frost's identity is a "genuine disputed material fact," and should preclude summary judgment.

WHETHER THE DISTRICT COURT ERRORED NOT INCLUDING THE JUNE 11, 2015 EVENTS AND "FROST'S ARREST FOR PFMA LINKED TO THE BOAT SHOOTING. Rule 404(b), identity Evidence

On the evening of June 11, 2015. Kevin Frost left his home after finding out his estranged wife wanted a divorce in a fit of rage with a gun. He was en-route to my home on 517 Keeling Ln. En route to my home "Frost," was diverted when he called my wife to tell her about the text I sent to Sherri Frost. My wife and I were separated at the time and she was staying at a hotel in Hamilton. This is where "Frost" ended up going. I heard "Frost" yelling in the background citing the text I sent to Sherri Frost when my wife was yelling at me on the phone. Id. This afternoon was the beginning of Kevin Frost's" fit of rage. Ultimately Kevin Frost returned to his home where he assaulted his father in law and was arrested for domestic violence PFMA on 6/11/2015. During the evening "Frost" was arrested his son found his loaded 9mm pistol with one in the chamber in his closet. This day shows "Frost's state of mind, intent, and motive and is inextricably linked to the boat shooting and is part of the domestic violence cycle. On June 7, 2015. Just days before "Frost" found out his wife was seeing me and wanted a divorce. He

threatened her saying “Don’t go on “that boat” it makes me look bad!” Implying Sherri and I were having an affair on the boat. *Id.*, page 8, *opposition for summary judgment*. Citing *State v. Sweeney*, 2000 MT 74, 299 Mont. 111, 999 P. 2d, 296, the court observed that “for evidence for prior crimes to be admissible to show motive or intent, ‘the commission of the first crime or act should give rise to a motive or reason for the defendant to commit the second crime.’ ” *Sweeney*, 25(quoting *State v. Weldy*, 273 Mont. 68,75 902 P.2d 1,5 (1995)); accord *State v. Sadowski*, 247 Mont. 63, 72 805 P.2d 537, 542(1991). The court stated. In some cases, the uncharged act will indeed furnish the motive for the charged act. For instance, an uncharged theft may supply the motive to murder the eyewitness to the theft. see *Imwinkelried*, *Uncharged Misconduct Evidence* at s 3:18,101. In this situation, the uncharged act is the cause, and the charged act is the effect. *Id.* at 3:18, 101. In other cases, however, the uncharged act evidences the existence of a motive but does not supply the motive. Rather, the motive is cause, and the charged and uncharged acts are effects; that is, both acts are explainable as a result of the same motive. The prosecutor uses the uncharged act to show the existence of the motive, and the motive, in turn, strengthens the inference of the defendant’s identity as the perpetrator of the charged act. *Id.* That is precisely what the

prosecutor seeks to do here. This is what I have been saying throughout this case. Citing State v. Blaz “illustrating a pattern of conduct” Proving Kevin Frost’s identity to the boat shooting.

After “Frost’s arrest for assault on 6/11/2015, he did not stop. His aggression continued, he was served divorce papers on 6/17/2015, this made him very angry. (state of mind). 6/18/2015 “Frost”, wrote an impropriety letter to Sherri Frost’s dad and my mother saying he was upset with Sherri and me. (state of mind). Citing State v. Ankeny, DA 15-0238, paragraph, 12,13., Ankeny’s five letters were submitted to the jury to demonstrate his manipulative behavior that exists in domestic violence relationships. “Frost’s” letters also prove his manipulative behavior and state of mind towards Sherri, me, and family, Exhibit A. On 6/27/2015, Sherri, me and the kids (Sherri’s daughter and her boyfriend) went to Lake Como, on my boat. This was Kevin Frost’s, dying father’s last birthday. He was extremely angry that his daughter and Sherri were at the lake with me on my boat on this day. (state of mind). He then sent a text to my estranged wife and stated: “ That boat is why all this happened and it’s a kid magnet and they will be on it all summer with Brian!” (state of mind, enmity). Days later my boat had 2 bullet holes in it, (Exhibit 1). The evidence above proves “Frost’s state of mind,

enmity and motive to shoot my boat as a death threat to Sherri Frost and me and is part of the cycle of domestic violence. It is a gross injustice not to link the 6/11/2015, 6/18/2015 letter, 6/27/2015, 6/29/2015 statements and text. (Attached Exhibits, 6/11 PFMA police report, 6/18 impropriety letter, on or about 6/27 statement, on or about 6/29 statement/text from Kevin Frost to Kim Moore, 7/1/2015 boat shooting police report, 7/1/2015 911 call from neighbor hearing gunshots and seeing the shooter running away, 7/2 text to my minor child from Kevin Frost at 5:03 am saying her dad is a deceitful liar and feeling better seems so very far away and he loves her. These crimes and acts give rise and reasons to prove Kevin Frost's motive and intent that he was the cause of the boat shooting. This is a gross injustice not to link all these acts as a cycle of domestic violence. State v. Ankeny 391 Mont, 176 2018 MT 91 417 P.3d 275 (2018) the court included a prior PFMA arrest and letters written by Ankeny, stating that they were part of the "domestic violence cycle." The court joined these two crimes because they were "remarkably similar," as the charges were brought under the same statute, involved the same victim, same location, same or similar *modus operandi*, and was committed a short time apart, and that joinder was in the interest of justice. The district court should have admitted Kevin Frost's June 11/12, 2015

arrest for PFMA on Sherri's dad to show his motive and that he resolves family issues with violence and demonstrates a careless disregard for people's safety and wellbeing.

WHETHER THE DISTRICT COURT ERRORED NOT LINKING THE BOAT SHOOTING AND KIDNAPPING TO PROVE "KEVIN FROST'S" IDENTITY

The subsequent crime on February 9, 2016, aggravated kidnapping of Sherri Frost from my home on 517 Keeling Ln. Solidifies that the perpetrator of the boat shooting is Kevin Frost. These two crimes are inextricably linked and earmarked as the handiwork of the accused.

BOAT SHOOTING:

Motive: power, control, money, ego, divorce, death threat

*Domestic Violence cycle

Prior PFMA 6/11/2015

innocent people involved

Same people involved, Kevin & Sherri Frost, Brian & Kim Moore

letter was written weeks before boat shooting 6/18/2015

"shooter, mastermind"
resolves family issues with violence and demonstrates careless disregard

AGGRAVATED KIDNAPPING:

Motive: power, control, money, divorce, ego, attempted murder

*Domestic Violence cycle

Prior PFMA 6/11/2015

innocent people involved

Same people involved, Kevin & Sherri Frost, Brian & Kim Moore

letter was written 7 weeks before kidnapping on 12/12/2015

"Kevin Frost"
resolves family issues with violence and demonstrates a careless disregard

for people's safety and wellbeing

Kevin Frost was served with divorce papers approx. 13 days before boat shooting on 6/17/2015

Kevin Frost sent a text to Kim about "that boat is why all this happened"

Location: 517 Keeling Ln.

Time: Between 5 and 6 am

Weekday: Wednesday

done in the dark

Parked at Mill Creek TRHD
walked a mile in the dark
to my home

Used unidentified vehicle

used irrigation ditch and woods
for cover

Waited for shooting light

Shot at my boat 200 yards
from my home

Gun involved

left phone at home?
(most likely)

Wearing dark clothing

for people's safety and wellbeing

Sherri Frost switched attorney and it was 20 days before kidnapping and divorce mediation

Kevin Frost called Sherri Frost threatening her about divorce 6 am

Location: 517 Keeling Ln.

Time: Between 6 and 7 am

Weekday: Tuesday

done in the dark

Parked at Mill Creek TRHD
walked a mile in the dark
to my home

Used unidentified vehicle
(Paid cash black Yukon)

used irrigation ditch and woods
for cover

Waited for Sherri to go to work

Attacked Sherri 200 yards
from my home

Gun, taser, knife involved

left phone at home
(verified)

Wearing dark clothing

(mask most likely)

mask was worn

A Man was seen
running towards
Mill Creek TRHD

Kevin Frost was seen
Speeding in a car towards
Mill Creek TRHD

Two gunshots were heard
911 was called

Screaming was heard
911 was called

Alibi: Kevin said he was
sleeping (unconfirmed)
between 5 and 7 am

Alibi? caught this time
between 5 and 7 am

Kevin texted my minor daughter
at 5:03 am the very next morning

Kevin is a very early riser 5 am
(Sherri Frost Affidavit)

Denies guilt
Criminal Endangerment
possible 10-year sentence

Denied guilt for a year and half
took a plea bargain, pled guilty
30-year sentence. In prison for 5

* Under Rule 404(b) identity and pattern often overlap because unique
behavior patterns can be used to establish "identity."

*These two crimes have the same behavioral fingerprint.

* As stated in State v. Ankeny, these crimes are "remarkably similar," they were
the same statute, same location, same time, same or similar *modus operandi*,
were committed within the guidelines of remoteness, and that joinder was/is in
the best interest of justice. State v. Blaz, 2017 MT 164, 12, 388 Mont. 105, 398
P.3d 247 (citation omitted). State v. Daffin, "the distinction between admissible
and inadmissible Rule 404(b) evidence turns on the intended purpose of the
evidence, not it's substance.

*My children were home in bed sleeping when both these crimes occurred. It has
extremely traumatized them. My youngest daughter and I have lifetime
restraining orders against Kevin Frost. I can't tell you how angry that makes me
and my family.

The district court cited the February 9, 2016 kidnapping. Stating that it had nothing
to do with the boat shooting. This is incorrect. The kidnapping has everything to do

with this case “They were in the same location.” Kevin Frost returned to my home after shooting my boat and endangering my children and neighbors. The boat shooting was the death threat and the kidnapping was the follow-through. The kidnapping was “Frost’s” final attempt to get rid of Sherri Frost so he wouldn’t lose money, and land in his divorce. The kidnapping, boat shooting, “Frost’s” prior PFMA on 6/11/2015 and all of “Frost’s” other acts, wrongful acts are part of the domestic violence cycle. All of these criminal acts, wrongful acts, etc...happened within 8 months. It’s puzzling that the district court did not connect these two crimes and cite Rule 404(b) motive, means, opportunity, knowledge, and a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other.

**WHETHER THE DISTRICT COURT ERRORED EXCLUDING MY
COUNSELORS FINDINGS AS INADMISSIBLE HEARSAY**

The court’s response stating that my counselor’s findings were inadmissible is incorrect. I started seeing Kristin Stoher after Sherri Frost was kidnapped from my home by Kevin Frost because I was extremely angry already about the boat shooting and I had had enough so I sought counseling. We spoke about the boat shooting all the time with Kristin Stoher. The boat shooting was on my mind all the time as well as my children’s. We were all worried and scared when It would

happen again, and it did! My counselor will testify as well as Sherri Frost and my family that I spoke about the boat shooting all the time. As for sheriff deputy Jesse Jessop stating I wasn't upset when he arrived and there were no signs of shock I wasn't crying or yelling. This again is false. When I saw the bullet holes in the boat I was extremely angry and called 911 immediately. The Sheriff didn't show up right away, I had time to calm down. As for Deputy Rob Liedly he didn't investigate the boat until weeks later, of course, I was calm by then. These are incorrect statements, of course, I was upset, my children were just shot at and could have been killed. This is a gross injustice and should not be granted summary judgment.

WHETHER THE DISTRICT COURT ERRORED IN PREMATURELY GRANTING APPELLEE TO QUASH TRESPASS, ACTUAL MALICE, AND PUNITIVE DAMAGES.

Would this not be a premature motion. "Frost," hasn't even been found guilty yet and was granted this motion to quash. If a jury finds "Frost," guilty of this crime and charges him. Then trespass, Actual Malice and punitive damages should be reinstated. At the time when the district court granted this motion, I didn't know I was supposed to respond to this. I thought that someone shooting at someone's family would demonstrate Actual Malice.

WHETHER THE COURT ERRORED IN GRANTING COURT COSTS

This action arose because the appellee resolves family problems with violence and demonstrates a disregard for people's safety and wellbeing. I am currently out thousands of dollars because of Kevin Frost's violence. Imposing costs on me is a gross injustice. My family did not deserve what Kevin Frost did to us because of a divorce. I would understand if "Frost" wasn't involved at all. However "Frost" is most definitely involved and should be responsible for his own cost. Citing "American Rule" fees and costs. "Frost" is also being defended by his insurance company "Homesite."

CONCLUSION

I filed this lawsuit to prove that Kevin Frost shot at my home/boat as a death threat to Sherri Frost and me and in the process could have harmed or killed one of my children. "Frost" is the only suspect that meets all the criteria to be the shooter. Motive means, and opportunity. It is my belief that if the boat shooting would have been taken more seriously the subsequent crimes and acts quite possibly never would have occurred. This case should be a reminder that domestic violence predators will go to any length to achieve their goals. Many children are harmed and killed in this country every year because of domestic violence and this case is

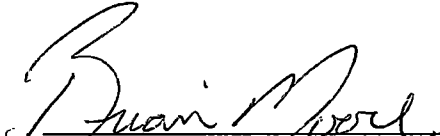
no different. "Frost" made many attempts to get his estranged wife alone and when all attempts failed the aggravated kidnapping occurred. The statistics for domestic violence homicides in the state of Montana in 2015/2016, when this case occurred were up 153%, that is a staggering statistic. Innocent people are part of the statistics as well. Citing the Montana Constitution, The "right to defend" is a fundamental right deserving the highest level of scrutiny and protection by the Court.

Constitution of Montana--Article II--DECLARATION OF RIGHTS

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and *defending their lives and liberties*, acquiring, possessing and *protecting property, and seeking their safety, health, and happiness in all lawful ways*. In enjoying these rights, all persons recognize corresponding responsibilities. (Italics and bold black added)

Based on the above facts and argument, I respectfully request this court to reverse summary judgment and remand this order to the district court.

Dated this 3 day of February, 2020


Brian Moore Appellant

CERTIFICATE OF SERVICE

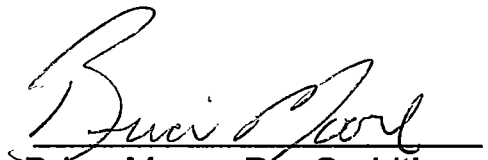
I, the undersigned, do hereby certify that on the 3 day of February, 2020.

A true and correct copy of the foregoing was served upon the following as indicated:

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