

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 REPLY BRIEF

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

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DISCUSSION

I want to take this opportunity to reply briefly to the opposing parties’ reply brief. I

will try not to be too redundant in this reply. First of all, I would like to address the cited cases. I cited State v. Daffin, 2017 MT 76, 15, 387 Mont. 154, 392 P.3d 150. I cited this case, not because of rape but because Daffin raped other women and there was no evidence. The prosecution used how Daffin did one rape and convicted him on the other rapes because they were so similar that it earmarked them as being the same person. The prosecution used this to prove identity under (Rule 404(b)). This is what I am doing in the case at hand. Frost's prior and subsequent PFMA to the shooting; Assault on Noel Cook, Sherri Frost, and me. Aggravated Kidnapping of Sheri Frost, I was involved as well. Same victims, same *modus operandi*. The boat shooting was a death threat to Sherri Frost and me. Same victims, same reason.

I cited State v. Ankeny 391, Mont. in this case the prior PFMA charge was joined because the two crimes were remarkably similar, both involved PFMA, involved the same victims, same location, same or similar *modus operandi*, and we're committed a short time apart, and that joinder was in the interest of justice. Frost's prior PFMA charge was not joined. It is a prior event and it involved "Frost" coming over to my home with a gun. Just because he was arrested before he made it to my home does in no way mean he wasn't pursuing me and coming over to my

home with a gun. The Prior PFMA shows Frost's state of mind. Kevin Frost wasn't getting what he wanted (state of mind). So 2 weeks later "Frost" comes over to my home and shoots my boat and endangers my children. Then 7 months later he came back to my home again and Kidnapped his estranged wife. "Frost" wrote letters to friends and family lying to them about what happened in his marriage, the kidnapping and affair with Kim Moore.

in State v. Blaz, 2017 MT, 164. in Blaz there was no direct evidence and no circumstantial evidence. The State used Blaze's prior PFMA under rule 404(b) to prove Blaze's Identity. Again in the case at hand. There was a prior PFMA charge that involved the same victims, same location, same *modus operandi*, committed a short time apart. and that joinder was in the interest of justice.

In-State v. Sadowski 247, Mont. In Sadowski, the court stated its opinion on rule 404(b) admission of prior acts as evidence to prove motive, intent, identity, state of mind. As I have relentlessly Stated throughout the "Frost" case. "Frost's" prior PFMA charge and "Frost" subsequent kidnapping charge are used to prove his state of mind, motive, and intent to prove his identity to the boat shooting. The district court excluded Frost's PFMA charge. It involved the same victims, the same perpetrator (Kevin Frost), and the same reasons (divorce, domestic

violence).

The district court also stated the boat shooting had nothing to do with the February 9, 2016 kidnapping. Allegedly based on remoteness of time. In *State v. Sadowski* 247, Mont, supra.

The court stated: With regards to nearness in time, each case must be examined in light of its unique set of facts see *State v. Hansen*, 187 Mont. 91, 608 P.2d 1083.

where we allowed two and one-half years. "Frost's" subsequent aggravated kidnapping was only 7 months after the boat shooting and there was intimidation, impropriety letters written, continued threats that occurred within the 7 months.

the court in *Sadowski* also stated:

Rule 404(b) evidence to be admissible as relevant towards motive, the commission of the first crime or act should give rise to a motive or reason for the defendant to commit the second crime. "Frost" prior PFMA gave rise to commit the boat shooting, and his subsequent kidnapping is proof that when a criminal commits one crime and gets away with it they usually commit the second crime in a similar manner. Why the district court excluded "Frost" prior PFMA is unjustified because it proves "Frost's" state of mind, motive, and intent towards me and my boat.

"Frost has said to Sherri and his daughter "Stay off that boat!" He also said, "That

boat is why all this happened". Then days later my boat has two bullet holes in it.

The blatant disregard for the truth is puzzling to me.

ARGUMENT

I will reply to the Appellee's Response Brief by page #

Page 7. As I have said repeatedly the affair was not the cause of the parties divorcing period! I was having problems with my marriage for years and I was separated from my wife the whole year of 2014/2015. Sherri wanted out of her abusive marriage for years but was terrified to leave. According to Sherri, Kevin threatened her with divorce many times over the years and it has nothing to do with me. Sherri and I weren't romantically involved until we both knew we were going to be divorced and that was later part of 2014. Kevin Frost wants to use the affair as an excuse for what he has done to Me, Sherri, and our families as if he had a perfect marriage and he had no responsibility for Sherri wanting to leave him. It's ridiculous. I wanted to clear this up.

Page 7. "Frost" saying he was sleeping when the boat was shot. Kevin Frost lied and is still lying to an entire community and his kids for one and a half years that he didn't kidnap Sherri. and now we are expected to believe he was in bed and he has nothing to do with the shooting.

Page 8. Nathan Winkelaar saw a man running away after he heard “two” shots. He said to me “he had a dark top and khaki pants. There were “two” bullet holes in my boat 200 yards away. There were no bullet holes in the boat before July 1, 2015. As I have said “Frost” most likely had a mask on when he shot the boat like he did when he Kidnaped and assaulted his estranged wife from my home.

Page 8. The comment that my family didn’t hear the gunshots. It was summertime and my kids are never awake around 5 and 6 in the morning anyway. So that explains why they didn’t hear gunshots from 200 yards away.

Page 9. I never told Lt Jessop that some people were mad. I said, “Kevin Frost is mad at me because his estranged wife and I were seeing each other.” Lt Jessop said “ that’s who most likely shot your boat. it’s common sense.

Page 9/10. Claiming that our kids shot the boat is ridiculous. First of all Sherri and I were not there when the boat was shot. Our kids were not in a fit of rage like Kevin Frost and Kim Moore were. they were sad and they certainly would not shoot at each other. They weren’t upset with each other. My estranged wife was in a rage by not enough to shoot at her own kids. Kim Moore was in a horrific car accident when she was younger and has a bum shoulder. She couldn’t shoot the boat even if she wanted to especially from 200 yards. not to mention she has never

shot a rifle in her life. Weeks prior to the boat shooting Kim Moore said to Sherri and I when we were at Lake Como "I'm gonna put a bullet in your head and a bullet in your head." Kim called Kevin and talked with him about us being at the lake. My daughter said Kim and Kevin were talking real bad about Sherri and me, she said it actually scared her. Sherri Frost on 6/11/2015 told the Deputy Sheriff that Kim Moore made the comment about Kim saying I'm gonna put a bullet in your head. Lt Jessop was not at the house very long. He said he was too busy. Deputy Rob Liedle did a more extensive investigation and concluded that "Frost" was the "only" "potential suspect." I did tell the Sheriff about the bullet in your head comment from Kim Moore and so did Sherri Frost.

Page 11. Kristen Stohr my therapist will testify in a court of law that we talked about the shooting all the time. This is a ridiculous statement. My whole family will testify that I have been talking about the boat shooting ever since it happened.

Page 16 -27. This is my first case as a Pro Se Litigant. In no way did I blatantly miss filing dates. **My children were shot at and could have been killed. I think that should take priority, not an inadvertent procedure. When the court brought to my attention I filed something incorrectly I corrected it. Also during the proceeding, I had a family member tragically pass away. I'm not**

asking for any special treatment but don't you think that we should all as a community come forward especially when innocent children are involved caused by domestic violence and gun violence.

EVIDENTIARY ISSUES

Page 27- 28

Comparison of boat shooting and kidnapping. This is in no way speculative or hearsay. "Frost " pleaded guilty that he was at my home 517 Keeling Ln when he kidnapped Sherri and was prepared to harm me as well. This is not speculation or hearsay. The boat shooting as well. The shooting of my boat and endangerment to my children is a Fact. All the evidence, in this case, is to prove "Frost" is the shooter of the boat. His state of mind, motive, intent, knowledge, etc...If I had a picture of "Frost" shooting the boat this case wouldn't be necessary in the first place. All the evidence in the case is to tell the story and what led Kevin Frost to shoot at my family. Stating the shooting was separated by seven months is of no moment and an incorrect statement. see State v. Sadowski, supra, nearness in time, State v. Hansen, 187 Mont. 91, 608 P.2d 1083. The court allowed two and one-half years. Other cases have been even longer for up to 4 years. 7 months between the

shooting and the kidnapping are relatively short. Stating that the shooting and kidnapping are factually dissimilar is again incorrect. same location; fact., same *modus operandi*; fact., same time of morning using darkness as cover; fact., same victims; fact., same reason; fact., resolving family issues with violence; fact.

Page 29. Texting my daughter at 5 am telling her her dad is a deceitful liar is beyond sick. This text scared and upset my daughter, that's why she gave it to me. she said "why is Kevin texting me, dad, he is weird" the coward has never texted my daughter before. texting a little girl about divorce is beyond disgusting. This statement is extremely egregious and my entire family and friends agree. This is proof "Frost" is manipulating and alienating the kids. what kind of sick person does this? "Frost" is safer in prison where he belongs.

"Frost" sent this text the next morning after he shot the boat. He talked with Kim Moore and she said my daughter was in the boat the morning he shot it. He felt so guilty about it he tried to cover his guilt by texting my daughter and pretend as if he cares about her. His dying father's last birthday party which he had forgotten about was going to be his alibi but my neighbor saw him so he changed his alibi saying he was in bed. While he never is in bed at 5 or 6 am he is always up early.

Page 30.

There are many cases that have no direct or circumstantial evidence. A famous case is Scott Peterson. There was no direct or circumstantial evidence. The jury sent Peterson to death row based on his demeanor after the murder of his pregnant wife.

As for this case, Kevin Frost has been to my home when he was seeing my estranged wife. He has been at my home and he has been in my boat. So Fingerprints, shoe or boot prints, gun, shell casings, DNA, torn clothing, or testimony to counter Frost's sworn statement he was home in bed do not apply in this case. As for testimony "Frost" did this crime in the dark with a mask on so no one would identify him. just as he did when he kidnapped his estranged wife. when a case like this one has no circumstantial evidence or direct evidence, then you move to the "Why" did "Frost" do this. This is why I filed this case, to bring out the truth since "Frost" refuses to. "Frost" is not stupid he has been in the personal injury business for approximately 30 years. "Frost" knew when he planned the shooting to cover all his tracks. He does a good job of manipulating and duping all who is involved. So much so he almost got away with attempting to murder his estranged wife. The Shooting and kidnapping are premeditated crimes.

There is something wrong with you if your family being shot at doesn't cause extreme anger, PTSD, homicidal thoughts, retaliation, martial law. I should just let people like Kevin Frost continue to terrorize my family and just look the other way? I don't think so.

CONCLUSION

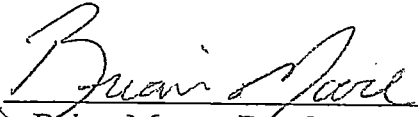
I want to let the Supreme Court know my experience since all this started. There was extreme violence before the boat was shot; the sheriff was called Kevin Frost and Kim Moore was arrested for PFMA. It didn't stop. I did nothing to Kevin Frost. I allowed the system to take its course like I am supposed to as a citizen of this community and this country. I taught my children this as well. When Kevin Frost Shot at my family it took everything I had not to retaliate. I called the Sheriff Department and did everything I was supposed to do. I did not take the law into my own hands like I wanted to. I was extremely angry at "Frost". He could have come to me and we could have worked it out but he decided to put my kids in grave danger instead. The Sheriff Department closed the case within a month of the shooting. "Frost" continued his aggression towards my family and on February 9, 2016. "Frost" came to my home and attempted to kill his estranged wife by assaulting and kidnapping her. I didn't pursue the boat shooting because I

mistakenly thought "Frost" would admit to the shooting because he had a 40-year sentence hanging over his head for the kidnapping charge. Obviously this did not happen. "Frost" was offered a plea deal without admitting to the boat shooting and assault on Noel Cook. If it were up to me I never would have agreed to a plea deal until "Frost" admitted to all he has done. As for attorney fees and cost, I am a parent trying to protect my children from Kevin Frost. It is unconscionable to be charged attorney fees and cost for a case like this. As it states in the American rule. If we all knew it would cost money to receive justice for your family no one would file a lawsuit and we would live in a different world. As for relief, I want Kevin Frost to pay for what he has done to my family because of his violence. Property damage to my boat, causing me and my children PTSD for the heinous act. My kids and I don't feel safe in our own home now because of Kevin Frost. We have lost the way we look at life now because of this man and he should have to pay for that. We don't know what Kevin Frost will do next especially when he is released from prison. No one has the right to bring extreme violence to someone's family because they are angry with them Noone!

New evidence has been acquired. I understand that the Supreme Court does not

consider new evidence. I have filed a motion with the district court for Rule 62.1, F.R. Civ. P. indicative rule on a motion for relief that is barred by a pending appeal. I also filed in tandem Rule 60(b)(2)(3) F.R. CIV.P. for the district court's consideration. If the district court finds the new evidence is a "substantial issue" and says it will remand. I will promptly file Rule 12.1 with the Supreme Court for Consideration. This new evidence was just revealed to me in the first part of May 2020.

Dated this 10 day of June 2020.



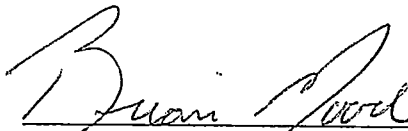
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 10th day of June, 2020, a true and correct copy of the foregoing was served upon the following as indicated:

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