

**SUPERIOR COURT  
OF THE  
DISTRICT OF COLUMBIA**

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SUPERIOR COURT OF  
THE DISTRICT OF COLUMBIA

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**UNITED STATES OF AMERICA**

**Criminal No. 2011CF115683**

**Judge Russell F. Canan**

**Status Hearing Date: March 7, 2013**

**v.**

**ALBRECHT MUTH**

**GOVERNMENT'S MOTION IN LIMINE TO ADMIT  
EVIDENCE OF OTHER CRIMES BY  
THE DEFENDANT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby respectfully moves *in limine* to introduce evidence of other crimes committed by the defendant in his current trial for First Degree Murder. As set forth herein, the defendant's prior acts of violence against Viola Drath, including threats to kill her and others, are direct evidence of his guilt on the pending charges and are admissible to show motive, intent, identity, absence of mistake or accident and consciousness of guilt. In support of this motion, the government relies upon the following points and authorities and any other points and authorities that may be cited at a hearing on this motion.

**BACKGROUND**

On the morning of August 12, 2011, the defendant called 911 and reported that his 91-year-old wife, Viola Drath, was dead on the bathroom floor of their Georgetown home located at [REDACTED] Q Street, NW. On August 16, 2011, the defendant was arrested for the murder of his wife. On March 6, 2012, a grand jury returned an indictment charging



the defendant with one count of first degree premeditated murder (with aggravating circumstances) for the murder of Viola Drath.

On the evening of August 11, 2011, the defendant became intoxicated, having spent much of the evening drinking with a young man he met on a Craigslist personal advertisement. Witnesses indicated that the defendant became progressively louder and somewhat belligerent during the course of the evening.<sup>1</sup> A witness escorted Muth to his row house on Q Street and saw him walking down the stairwell to his basement of his residence at approximately 10:30 pm. In the early morning hours of August 12, 2011, a witness heard a woman's faint cry and a man's laugh emanating from inside the defendant's home. At approximately 7:56 a.m. on August 12, 2011, the defendant called 911 and reported that he found his wife dead on the bathroom floor. When police arrived, there were no signs of forced entry into the house, nothing was taken or disturbed, and the only ones with keys to the house were Muth, the decedent, and the decedent's grandson. According to the defendant, he and his wife were the only two present in the home during the previous evening. There is a documented history of domestic violence by Muth against his wife. In addition, the defendant has made a number of statements over the years indicating a desire to kill her, as will be detailed below.

On the very day that the defendant reported that Ms. Drath was dead, the defendant presented to the decedent's daughter a one-page document, purporting to be some kind of informal codicil, indicating that his (now deceased) wife wanted to

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<sup>1</sup>Multiple witnesses relate that the defendant often became loud and belligerent when he drank to excess, which was often.

bequeath him \$150,000.00, plus an additional \$50,000.00 if her liquid assets exceeded \$600,000.00. However, subsequent investigation revealed that this exact same bequeath was specifically rejected by Ms. Viola Drath at the time of the drafting and execution of her will in November of 2010. Rather, Ms. Drath specifically disinherited the defendant in her will.

An autopsy performed on the body of Ms. Drath revealed that she suffered multiple rib fractures, multiple abrasions and contusions (neck, face, scalp, abdomen, upper extremities, inner lip); fractured hyoid bone, petechial hemorrhages to the eyes and epiglottis; torn right thumbnail, among other injuries. Dr. Carolyn Revercomb, who performed the autopsy, determined that the cause of death was strangulation and blunt force injuries and ruled the manner of death a homicide. Both the medical forensic investigator who responded to the scene and the forensic pathologist who performed the autopsy and reviewed the crime scene photographs opined that the decedent's body appeared to have been positioned, laying ramrod straight in a small bathroom with two small bathroom rugs bunched-up under her upper back.

### **Incidents of Threats and Domestic Violence**

1. In 1992, the defendant was convicted of assaulting his wife, Viola Drath (Criminal Case #: M-4632-92). Specifically, on March 31, 1992, upon returning home from a trip, Ms. Drath entered her home and called out for Muth, but did not get a reply. Apparently, when she called out for him a second time, she interrupted him as he spoke on the phone. He responded by punching her in the face a number of times, throwing her to the floor and punching her in the ribs as well. The photographs of her face show significant injuries around both eyes. She fled to a nearby church and Pastor William



Wegener (now deceased) called 911 and reported the incident. Muth was arrested and advised of his rights, and denied the assault, saying, per the PD 163, "I haven't even had a chance to see my wife yet." Muth pleaded guilty to assault and was sentenced to 365 days in jail, ESS all but time served, with one year of supervised probation.

2. The next domestic violence incident is reflected in Criminal Case #M-10001-92. Although Ms. Drath ultimately asserted her marital privilege, resulting in the case being dismissed without prejudice, the police reports stated that on July 16, 1992, while on a trip to New York together, Muth "choked W-1 and told her he was going to kill her." Ms. Drath "escaped the attack and returned home" on July 17. Once home, she heard Muth come to the front door banging and yelling. She refused to let him in and called the police. Muth went around to the back and broke a widow pane in the door and entered the home. Ms. Drath reportedly fled out into the street. According to the case file, when police arrived they actually heard Muth threatening Ms. Drath.

3. The next incident involved a complainant, herein referred to as "D.D", who was a male friend with whom Muth lived with for some time in 2003 - 2004. Muth threatened to kill D.D. when D.D. made it clear that he no longer wanted to have anything to do with the defendant. The case, (# SV-2615-04), ultimately was nolle in October of 2004. Importantly, Muth told D.D. that, while he and Viola were on a trip to Egypt or Jordan, Muth had wanted to push her down in the desert and leave her for dead, but there were too many people around and he was afraid he'd get caught.<sup>2</sup>

4. On May 28, 2006, Ms. Drath reported to police that Muth had been drinking

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<sup>2</sup>The government will seek to introduce the defendant's statement to D.D. about wanting to kill his wife, but we will not seek to introduce the defendant's threats to kill D.D.

and had become incensed about a comment she had made about her daughter. He initially assaulted her with a chair, then proceeded to pound her head against the floor several times. He then sat on her between five and ten minutes, refusing to let her leave or notify the authorities. An arrest warrant was issued on May 30, 2006, for this assault. Based on employment records and Muth's own email, he fled to Miami, Florida, interviewing for a job at the Marseilles Hotel, just a few days after the assault had taken place. Ultimately, the defendant returned to DC and was arrested in January of 2008, as a result of the 2006 assault. Again, Ms. Drath ended up asserting her marital privilege and the case was nolle on May 19, 2008.

5. In January of 2011, an individual was at the defendant's Georgetown residence, providing some computer services to him. While there, Ms. Drath entered the room he was working in with a glass of water on a tray and offered it to the witness, who said, "No, but thank you for your hospitality." The defendant became angry and approached his wife, stating, "You need to get the fuck out of here and stay out of my business, he does not want water." The defendant then indicated she should leave the room, but she remained in the room. The defendant then forcefully shoved her in the chest with his open palms, and Ms. Drath reeled backward but caught herself in the doorway. The incident was shocking to the witness, as Ms. Drath had done nothing but offer him a drink of water. The same witness returned to the defendant's house on two occasions to do additional computer work. He again witnessed the defendant being verbally abusive toward Ms. Drath, saying, *inter alia*, that she was "useless."

6. On one occasion, some months before the murder, the defendant approached a witness from whom he would occasionally purchase illegal drugs, and complained that



the "old lady" wasn't giving him enough money and said he wanted to get control of her money. He asked the witness to "do her in" or "do away with her." He said the "old lady" was his step-mother and had abused him as a child. The defendant said that he could call the witness when she was going out for a walk, and it will just look like another robbery gone bad in Georgetown.

7. In May of 2008, Ms. Drath called a friend and, according to this witness, was "very very agitated." Ms. Drath told him that Muth had been arrested and that they're having problems. She also told him that the defendant gets violent when he's drunk, that he once broke her arm, and that she has a restraining order against him.

In October of 2010, the same witness had lunch with the defendant. Muth asked him if he could get the prenuptial agreement voided that he had with Ms. Drath. The witness (an attorney) said he would need to check with Ms. Drath to see if that's what she wanted. When he did, Ms. Drath indicated that she did not want to void the prenuptial agreement.

In April 2011, this same witness had a number of conversations with Ms. Drath in which she indicated she wanted to divorce Muth. The witness attended an April 2011 luncheon at DACOR-BACON, hosted by Ms. Drath. He reported that Muth arrived late to the function and was "incredibly rude" to Ms. Drath. This witness stated that it was a "very uncomfortable situation." The next day, Ms. Drath and the defendant hosted a dinner at their residence. After the dinner, Ms. Drath pulled this witness aside and asked if they could meet for lunch. Ms. Drath also stated to him that things were getting intolerable between her and the defendant. Ms. Drath also told him not to call the house or email her, since Muth was monitoring all of her calls and emails. On April 12,



the witness and Ms. Drath had lunch at Paparazzi Restaurant in Georgetown. During the course of their conversation, Ms. Drath told this witness that things at home had gotten intolerable and wanted to divorce Muth. She also relayed that when she did that it would be a very messy situation and she would need to get him evicted from the house and would need to get a restraining order. In addition, told him that she would need to find an aggressive divorce lawyer.

Just a few days before her death, the witness again had lunch with Ms. Drath. She told him that her situation with Muth was continuing to deteriorate and that it was intolerable. She communicated to this witness how she really wanted to get a divorce. She indicated that she was going to have Muth forcibly evicted from the house because she knew he wouldn't go willingly. Ms. Drath also told the witness how Muth had coerced her into signing a document, giving him access to one of her bank accounts and how he complained that the \$2,000 a month allowance she gave him was not sufficient. She also reported that not only had Muth threatened her, but he had also threatened her grandson, who was in active duty in Iraq or Afghanistan at that time and she was very worried about that.

8. SA Rock is a State Department Investigator who looked into some of Mr. Muth's activities. For example, Muth would take documents that had been disclosed as part of the Wiki-leaks scandal and fax them to the State Department as if he had some inside information. In September of 2010, SA Rock, together with Chief Kimber Davidson, called the home phone number at [REDACTED] Q Street and Ms. Drath answered the phone. She had started to provide information about Muth when suddenly there were noises in the background and the phone went dead. They were so concerned that they



grabbed their guns and drove to [REDACTED] Q Street. When they arrived, there was no answer at the door.

On September 17, 2010, Ms. Drath called Chief Kimber Davidson and asked if she could meet with the agents. They met at a restaurant and Ms. Drath had a black eye. When asked about it, she claimed that she had fallen, but admitted that Muth knocked the phone out of her hand during their earlier phone conversation. Ms. Drath told the agents that "Muth will do something terrible sooner or later." The agents told Ms. Drath that she should call the local police if Muth did anything else to her.

The government now seeks to introduce this evidence as (1) motive evidence; (2) proof of intent, absence of mistake or accident and identity; and (3) consciousness of guilt.

### **ARGUMENT**

Although it is widely recognized that evidence of other crimes is inadmissible to show propensity or predisposition to commit the charged crime, see Drew v. United States, 331 F.2d 85, 89 (D.C. Cir. 1964), other crimes evidence may be relevant to show (1) motive, (2) intent, (3) absence of mistake or accident, (4) common scheme or plan, and (5) identity. Id. at 90; see Johnson v. United States, 683 A.2d 1087, 1092 (D.C. 1996), cert. denied, 520 U.S. 1148 (1997). And in domestic violence cases, such as the one at hand, evidence of previous hostility between spouses or lovers may be particularly relevant to show motive/intent and identity.

Taking these exceptions one by one, under the "motive" exception, "cases in which the evidence shows instances of previous hostility between a husband or wife are sometimes treated as though they form a group by themselves." Gezmu v. United States,



375 A.2d 520, 522 (D.C. 1977); see also *Frye v. United States*, 926 A.2d 1085, 1092 (D.C. 2005) (“[p]rior hostility between a couple, married or not, is admissible under the ‘motive’ exception of *Drew*”). Indeed, where one spouse or partner in a relationship commits a crime against the other, “**any fact or circumstance relating to ill-feeling; ill-treatment; jealousy, prior assaults, personal violence, threats or any similar conduct . . . are relevant to show motive and malice in such crimes.**” *Gezmu v. United States*, 375 A.2d at 522 (emphasis added); *Hill v. United States*, 600 A.2d 58, 61 (D.C. 1991) (holding that evidence of prior hostility between partners is “particularly relevant” in domestic homicide cases). The key to admissibility under this exception is “the fact that defendant had a motive to harm this particular victim, with whom he already had an established relationship.” *Hill v. United States*, 600 A.2d at 61.

For example, in the case of *United States v. Hill*, 600 A.2d at 61, where the defendant stood accused of murdering his girlfriend, the prosecution was permitted to introduce evidence of prior uncharged assaults, and complaints filed by the victim, leaving the jury to infer that the defendant had a reason to be angry at the victim, as demonstrated by the fact that he had previously assaulted her and because she had reported his crimes to law enforcement. The court noted that the fact that the victim filed a complaint against the defendant may have intensified his motive or even given him additional motives, but the “assault itself showed that he had a motive” and was thus, properly admissible. *Id.* See also *Garibay v. United States*, 634 A.2d 946 (D.C. 1993) (upholding admissibility of rape of wife at gunpoint fifteen months before charged sexual assault). Similarly, in *Frye v. United States*, 926 A.2d at 1093, the Court of Appeals held that the defendant’s prior threats and assaultive conduct towards his ex-

girlfriend, in an unsuccessful attempt to convince her to reconcile, "is indicative of his motive to engage in the assaultive conduct against [the victim] that formed the basis for the charges," and thus, properly admissible.<sup>3</sup> See also Green v. United States, 580 A.2d 1325 (D.C. 1990) (upholding admission of evidence that during the month preceding the murder, defendant had assaulted the victim with a knife, when she refused to resume the relationship, tried to break into her home, and made threatening phone calls).

In this case, there is a direct correlation between the defendant's prior bad acts and the elements of the crime charged. The defendant has been indicted for First Degree Murder, which requires proof of specific intent. Evidence of intent is always an issue that requires careful consideration by a jury because "there is no way of directly looking into the workings of a human mind." Criminal Jury Instruction for the District of Columbia No. 3.02 (4<sup>th</sup> Ed. 1992). Here, evidence of the prior assaults, not only gives context to the circumstances of this case, but is directly relevant to show that defendant had a motive to kill Ms. Drath and thus, the intent to kill her. Specifically, the testimony will show that during the course of their relationship, defendant was often demeaning of and violent toward Ms. Drath. The defendant was angry at Ms. Drath for reducing his monthly allowance. In the year preceding her death, matters seemed to deteriorate even

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<sup>1</sup>Although the key to admissibility under these Drew exceptions is the defendant's prior criminal conduct directed against the same victim, the Court of Appeals has also recognized that the "web of spousal discord often entangles third parties." Mitchell v. United States, 629 A.2d 10, 14 (D.C. 1993), cert. denied, 510 U.S. 1138 (1994). Therefore, for admissibility determinations under the motive exception, "we see no reason to artificially distinguish between those situations where the victim of the initial wrongful conduct and the ultimate crime are identical, and where the ultimate victim is a third party with a clear nexus to the initial misconduct." Id. Logically, then, defendant's threats to others, which stem from incidents of domestic violence against Yolanda Baker, are also properly admissible.



further, and the defendant sought the assistance of another in having her "done away with." The defendant's antagonism toward his spouse constitutes evidence of his motive and intent to kill her, is thus relevant, probative, and important to the government's case.

The evidence of prior threats and acts of domestic violence is also critical to show identity. "Motive evidence may be 'highly probative' of the identity of the perpetrator of the offense." Frye v. United States, 926 A.2d at 1092; see Parks v. United States, 656 A.2d 1137, 1138 (D.C.) (prior assaults and threats committed by defendant against former girlfriend properly admitted to prove identity of murderer); cert. denied, 516 U.S. 873 (1995) Rink v. United States, 388 A.2d 52, 57 (D.C. 1978) ("evidence of prior aggressive conduct of the defendant towards the deceased . . . is probative of . . . whether [defendant] was likely to be the aggressor"). "Where the identity of the decedent's murderer is drawn into issue, evidence of prior altercations of a substantive and violent nature between the accused and the decedent is probative." Hill v. United States, 600 A.2d at 62.

In the instant case, as in Hill, there are no eye witnesses to the murder, and the defendant is certainly claiming that he is not the perpetrator. Thus, the issue of identity is squarely contested. And since there will be no eye witness testimony as to who killed Ms. Drath, evidence that the defendant had a motive to kill her is critical to showing the identity of the killer.

Once the government shows that there is clear and convincing evidence that the defendant committed the other crimes and acts, the evidence is admissible as long as the danger of unfair prejudice does not substantially outweigh the probative value of the

other crimes evidence. It is well established in this jurisdiction that the Court may rely upon the government's proffer to admit other crimes evidence. Daniels v. United States, 613 A.2d 342 (D.C. 1992). Here, evidence of defendant's prior misconduct will be established by eyewitness testimony, corroborated by police reports, court records, 911 calls, photographs, and defendant's own statements, attesting to his volatile relationship with the victim. Thus, there is no danger that the prior crimes are speculative or specious.

Moreover, the evidence is not in any way unfairly prejudicial. Accordingly, there is little likelihood that the jury will be lured into declaring guilt on an improper basis. In addition, none of the other crimes evidence is of a magnitude that even minimally approaches the magnitude of the charged offense, i.e., murder, but rather, involves domestic disputes. Moreover, to the extent any prejudice exists, most courts agree that in weighing the prejudice of this evidence, a limiting instruction is presumed to "reduce, if not dissipate, the danger of unfairness and prejudice." Frye v. United States, 926 A.2d at 1094.

WHEREFORE, the government respectfully requests that the Court grant its Motion *In Limine* to Admit Evidence of Other Crimes by the Defendant.



Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served by email upon attorneys Dana Page, Esq. and Craig Hickein, Esq., Public Defender Service, 633 Indiana Avenue, N.W., Washington, D.C. 20004, this 1<sup>st</sup> day of March, 2013.

  
Assistant United States Attorney