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FROM: Vance Bradford Long  
Senior Resident Superior Court Judge  
Judicial District 19B

*VBK* 9/27/17

RE: State vs. Scott David Allen  
Montgomery County – 99 CRS 3818, 3820

RULING ON LIMITED EVIDENTIARY HEARING OF AUGUST 25, 2017  
on Supplemental Motion for Appropriate Relief (SMAR) Claims 3H, 3J, 3K and a  
portion of 3I.

The Court conducted a limited evidentiary hearing on August 25, 2017 for the  
purpose of determining if the Defendant was entitled to proceed with a full  
evidentiary hearing as it relates to SMAR claims 3H, 3J, 3K and a portion of 3I.

The Court having reserved ruling at the hearing enters the following:

1. The Court determines that a further evidentiary hearing on SMAR claims 3H, 3J, 3K and a portion of 3I is not needed.
2. The Court grants the State's Motion to Dismiss the Defendant's claims on SMAR 3H, 3J, 3K and a portion of 3I that relates to the *in camera* inspection by the trial court of medical records of Vanessa Smith.
3. The proposed Order shall be drafted by counsel for the State. The Order shall contain the facts set out below by the Court. The import of the proposed findings set out below shall be included but need not be included verbatim or in the same order and may be recombined or reworded as deemed appropriate by the State's counsel in the proposed order. In addition counsel for the State shall track the arguments set out in the State's brief in drafting additional Findings of

Fact and Conclusions of Law. The Court reserves the right to add, modify and delete proposed findings or conclusions of law until the Order is filed.

#### MEMORANDUM

1. The proposed Order shall contain a procedural history of the case including: the trial court's *in camera* inspection of Vanessa Smith's medical records; the ruling of the trial court; the dates of filing of the MAR and SMAR, and State's Motion to Dismiss. The entry of this Court's Order allowing States Motion in part; specifically addressing the Court's Order for a limited evidentiary hearing as to the sealed medical records and the Defendant's claims as enumerated in the SMAR. The date of the hearing and the entry of the Order setting out the confines of the Court's inquiry.
2. Dr. John Warren a licensed Psychologist testified for the Defendant and was received by the Court as an expert.
3. Dr. Warren's opinion is that Vanessa Smith suffered from serious psychological problems which would negatively impact her concern for telling the truth and/or negatively impact her concern for actions impacting others.
4. Dr. Warren's opinion is based almost entirely on the use of the phrase "spiritual bankrupt" in the Black Mountain report. Dr. Warren opines: (a) spiritually bankrupt is a "term of art" which has special meaning for Psychologists. (b) A person who is spiritually bankrupt is most likely to exhibit a Personality B Complex Array of symptoms. This could be either Anti-Social Personality Disorder or Border line Personality Disorder.
5. Dr. Warren did not examine Vanessa Smith.

6. Dr. Warren dismissed the ability of the Treatment Team at Black Mountain to make an Axis II diagnosis. Vanessa Smith was examined by a licensed medical doctor who supervised her treatment. The doctor made an Axis I and III diagnosis. The record indicates that a Psychiatric and social exam of Vanessa Smith was also performed. There was not Axis II diagnosis.
7. In the Black Mountain report spiritually bankrupt is used by a social worker who gathered information during treatment. Under the heading spiritual orientation the social worker described Vanessa Smith as being spiritually bankrupt and Ms. Smith participating in devil worship. The term spiritually bankrupt is also used in two separate places in the notes without a reference to spiritual beliefs.
8. In the Black Mountain report Vanessa Smith was found to be orientated as to time and place without the note of any significant psychological problems for which the form provided. There is no evidence before the Court that the form was not filled out because was no one present who could record psychological observations.
9. Dr. Warren further opines that Vanessa Smith has Personality B Complex Array disorder owing to her failure to obey Black Mountain Treatment Center Rules. The Court's review shows a rebuke issued for smoking in the room and the Treatment Center's strong objection to Vanessa Smith leaving treatment one day early.
10. Dr. Warren's report is wholly unpersuasive as it turns primarily on the use of the term spiritually bankrupt and the assumption there was no Axis II diagnosis at Black Mountain as Dr. Warren believes no one was capable to note if not definitively make an Axis II diagnosis. There was no evidence that Dr. Warren made any investigation as to the qualifications of anyone treating Vanessa Smith at Black Mountain.

11. Dr. Warren presented no documented evidence from medical literature as the accepted medical interpretation of the term "spiritually bankrupt", other than his opinion that it is a term of art and in his opinion most likely means a Personality B Complex or Array diagnosis on Axis II.
12. Otherwise the record is bereft of any evidence to support an Axis II Personality B array. Certainly Dr. Warren failed to enumerate in his testimony what observations and analysis of the treatment team were relied upon by Dr. Warren in making the Axis II Personality B array, other than use of the term spiritually bankrupt.
13. The trial court allowed the Defendant to question Vanessa Smith concerning the 1998 Stanly County outpatient commitment.
14. All the medical records reviewed by the Court were placed under seal and reviewed by Dr. Warren and were provided to Defendant's counsel. These records were available for inspection by MAR counsel or their experts since 2007.
15. The Black Mountain treatment occurred September 9, 1993 or ten years prior to Vanessa Smith's testimony.
16. The Black Mountain treatment notes make reference to a 1992 in-patient treatment at a Highwoods facility. There are no records of this treatment and none were reviewed by the trial court.
17. The Defendant has failed to establish that the trial court denial of access to Vanessa Smith's treatment records at the Black Mountain Treatment Facility deprived the Defendant of any constitutional right and the Defendant is thereby not entitled to any relief.