

DA 21-0586

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 25

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JACOB CHRISTIAN PALMER,

Defendant and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DC-21-022(A)
Honorable Amy Eddy, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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For Appellee:

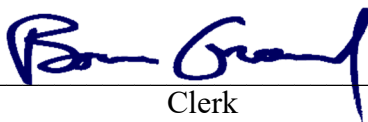
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Submitted on Briefs: November 8, 2023

Decided: February 13, 2024

Filed:


Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Jacob Palmer appeals the ruling of the Eleventh Judicial District Court, Flathead County, admitting evidence in his trial for felony Partner or Family Member Assault (PFMA) about prior altercations between Palmer and his girlfriend, K.Y., the victim in this case. Palmer was found guilty. We affirm, and address the following issue:

Did the District Court abuse its discretion by admitting evidence in Palmer's PFMA trial concerning his prior altercations with the victim?

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Palmer and K.Y. had been in a relationship over the course of a decade and have two children together. On January 24, 2021, while Palmer and K.Y. were walking together in downtown Kalispell, Palmer became angry and aggressive towards K.Y. Palmer threw a can of ravioli at K.Y., injuring her foot, berated her, and then walked away with her. As they walked, Palmer squeezed K.Y.'s fingers tightly and threatened to break them, prompting K.Y. to shout for help. Later, while at the mall, K.Y. phoned her sister to tell her what had occurred and asked to be picked up, prompting Palmer to take the phone away. Palmer and K.Y. continued to argue, and Palmer again tightly squeezed K.Y.'s hand, this time to the point that K.Y. fell over in pain in the street, injuring her knee. After initially watching K.Y., Palmer pulled her to her feet and covered her mouth because K.Y. was attempting to scream. He then drew her tight to him as if nothing was wrong.

¶3 A passerby observed this incident and called police, who arrived shortly thereafter. Palmer and K.Y. were then sitting on a bench outside a restaurant. K.Y. would later testify that Palmer had just told her: "he would rather go back to jail for murder, not another

PFMA,” but Palmer appeared very calm to the police. K.Y. appeared “frantic, frustrated,” but did not want to speak to the officers, stating she just wanted to be picked up by her sister. The officers separated Palmer and K.Y., and, eventually, K.Y. agreed to provide a statement about what had occurred. When Officer Kaare, speaking to Palmer, mentioned that K.Y. appeared to be injured, he replied, “oh,” and stated that nothing physical had occurred. He asked Kaare to tell K.Y. “that he loved her.”

¶4 Officer Cronin observed an abnormal amount of K.Y.’s hair was falling out, her knee and hands were bleeding, and that she had difficulty writing due to pain in her hands. Upon being asked about what had led to the altercation, K.Y. divulged that Palmer had choked her to the point of unconsciousness the prior week, and referenced an incident in December 2018 when police responded to a call from K.Y.’s sister about Palmer forcibly removing K.Y. from the house and beating her. That time, police had found K.Y. with Palmer in his truck; K.Y. had been beaten, her hair pulled out, had sustained injuries to her face, ears, eyes, arms, shoulders, hands, and neck, and was sprinkled with glass from Palmer’s broken windshield. Following that incident, K.Y. had likewise resisted talking to police, despite being hospitalized, stating she did not want Palmer to “go away forever.” She eventually provided a statement. From that incident, Palmer pled guilty to PFMA, driving under the influence of alcohol, and criminal endangerment, which had been reduced from kidnapping.

¶5 Based on K.Y.’s account of the present incident, Palmer was charged with PFMA, Third Offense.¹ Palmer filed a *motion in limine* requesting the District Court to preclude the State from “commenting upon, or eliciting any testimony through the course of these proceedings pertaining to, any offense, wrongs, or acts of the Defendant for which he is not charged in the current case,” and, alternatively, that if the evidence was admissible for those purposes, it should nonetheless be excluded as overly prejudicial under M. R. Evid. 403. The State objected, arguing that evidence of the prior incidents was admissible to show lack of mistake and to “provide the jury with context and understanding of why [K.Y.] was so fearful of [Palmer] and why she was reluctant to tell Officer Cronin what happened.” The District Court denied the motion, reasoning that evidence of the prior incidents, including the incident the week prior and the 2018 incident, were relevant and admissible because it involved “the same victim, the same conduct, and [were] not remote in time,” the State had demonstrated that the evidence was admissible for proper purposes, and that, in accordance with *State v. Dist. Court of the Eighteenth Judicial Dist.*, 2010 MT 263, 358 Mont. 325, 246 P.3d 415 (*Salvagni*), the charged acts “are explainable as a result of the same motive” and to rebut any inference of mistake or accident, “particularly. . . in the context of intimate partner violence.” The District Court ruled it would provide a cautionary instruction. The District Court also concluded the evidence was admissible under the transaction rule, § 26-1-103, MCA.

¹ Palmer was previously convicted of PFMA in 2014 and 2018. The 2014 conviction was not referenced in the trial.

¶6 At trial, the testimony of K.Y., her sister, and Officer Cronin each included details related to Palmer’s prior acts towards K.Y. Prior to each witness, the District Court instructed the jury that:

The State will now offer evidence the Defendant at another time engaged in other acts. That evidence is not admitted to prove the character of the Defendant or to show he acted in conformity therewith. The only purpose of admitting that evidence is to show proof of intent, motive, pattern, lack of mistake or accident of the Defendant, and/or to explain [K.Y.’s] behavior with law enforcement officers; you may not use this evidence for any other purpose. The Defendant is not being tried for any other acts. He may not be convicted for any offense than that charged in this case. For the jury to convict the Defendant of any other offense than that charged in this case would result in an unjust double punishment of the Defendant.

The District Court also reminded the jury of the instruction prior to testimony from Commander Buls, who testified about his investigation into the December 2018 incident.

¶7 The prosecution called Hilary Shaw as a “blind” expert witness regarding domestic violence. She testified that “domestic violence is defined as a pattern of behavior used to gain and maintain power and control over an intimate partner.” She stated that domestic violence is cyclical, not explosive all the time, and that abusers often use isolation, psychological damage, threats, and lack of resources to force the victim to stay in the relationship.

¶8 The jury found Palmer guilty of felony PFMA. He was sentenced to ten years in prison, with no time suspended.

¶9 Palmer appeals.

STANDARD OF REVIEW

¶10 “This Court reviews a district court’s ruling regarding the admission of other crimes, wrongs, or acts for an abuse of discretion.” *State v. Crider*, 2014 MT 139, ¶ 14, 375 Mont. 187, 328 P.3d 612. “A district court abuses its discretion if it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice.” *Comm’r of Political Practices for Mont. v. Wittich*, 2017 MT 210, ¶ 14, 388 Mont. 347, 400 P.3d 735. Even if a court abuses its discretion in an evidentiary ruling, the abuse constitutes reversible error only if “a substantial right of the party is affected.” *In re Estate of Edwards*, 2017 MT 93, ¶ 50, 387 Mont. 274, 393 P.3d 639. “To the extent the court’s ruling is based on an interpretation of an evidentiary rule or statute, our review is de novo.” *Crider*, ¶ 14.

DISCUSSION

¶11 *Did the District Court abuse its discretion by admitting evidence in Palmer’s PFMA trial concerning his prior altercations with the victim?*

¶12 Palmer argues the District Court’s admission of evidence relating to his prior altercations with K.Y. was improper under M. R. Evid. 404(b) because, despite the “alleged purpose of motive, knowledge, and lack of mistake or accident,” the evidence, in fact, “invited the jury” to conclude that “because [Palmer] committed a bad act in the past, he is a bad person who has likely repeated that act and is thus guilty of the crime charged.” He asks to “receive a new trial excluding any prior act evidence.” The State responds that the evidence of Palmer’s prior acts was proper under Rule 404(b) “to provide context for

Palmer's and K.Y.'s relationship and for why K.Y. did not report the abuse or was otherwise reluctant to discuss the abuse with law enforcement."

¶13 M. R. Evid. 404(b) provides, in pertinent part, that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." The Rule "does not bar evidence, but rather prohibits a 'theory of admissibility'—using evidence of other crimes or wrongs to prove the defendant's subjective character 'in order to show conduct in conformity with that character on a particular occasion.'" *State v. Stryker*, 2023 MT 63, ¶ 14, 412 Mont. 1, 527 P.3d 606 (quoting *Salvagni*, ¶ 47). A party cannot introduce evidence of other acts for the purpose of establishing an accused's character, and inferring, "based on evidence of other uncharged bad acts or allegations, that [the] accused is a person of bad character, and thus likely guilty of the charged offense based on common experience or belief that persons of bad character are predisposed or have a tendency or propensity to subsequently act in conformance therewith." *State v. McGhee*, 2021 MT 193, ¶ 14, 405 Mont. 121, 492 P.3d 518. The Rule provides that prior acts "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Accordingly, we have held that "[t]he distinction between admissible and inadmissible Rule 404(b) evidence turns on the intended purpose of the evidence, not its substance." *Stryker*, ¶ 15 (internal quotations omitted). If evidence is admitted for a permissible purpose under Rule 404(b), "the trial court must ensure that the use of [that] evidence is 'clearly justified and carefully limited.'" *State v. James*, 2022 MT

177, ¶ 13, 410 Mont. 55, 517 P.3d 170 (quoting *State v. Madplume*, 2017 MT 40, ¶ 23, 386 Mont. 368, 390 P.3d 142).

¶14 We have previously recognized the evidentiary challenges involved in proving a charge arising from domestic violence, including the need to provide clarification for the jury about potentially “perplexing behavior” of such victims. *State v. Haithcox*, 2019 MT 201, ¶ 19, 397 Mont. 103, 447 P.3d 452. Although we concluded the evidence was properly admitted in *Haithcox* under the transaction rule, *Haithcox*, ¶ 18, we explained that:

Abuse within intimate relationships often follows a pattern known as the cycle of violence, ‘which consists of a tension building phase, followed by acute battering of the victim, and finally by a contrite phase where the batterer’s use of promises and gifts increases the battered woman’s hope that violence has occurred for the last time.’

Haithcox, ¶ 19 (quoting *Hernandez v. Ashcroft*, 345 F.3d 824, 836 (9th Cir. 2003)) (internal quotations omitted). We noted that such evidence was properly admitted there “to demonstrate a pattern in the relationship which left [the victim] simultaneously fearful and hopeful that [the Defendant] would change, which explained why [the victim] would not have immediately contacted the police. The evidence was used to illustrate the complexity of [the victim’s] behavior and, in turn, maintain her credibility.” *Haithcox*, ¶ 19. The District Court here cited *Haithcox* in support of its evidentiary ruling.

¶15 In *Crider*, the defendant was charged with sexual intercourse without consent and PFMA after he drunkenly had violent sex with the victim, his then-girlfriend, pulled her around by her hair, threw her against the wall, and locked her out of the house naked in the middle of the night. *Crider*, ¶ 5. The victim initially recanted her allegation of rape, but at trial returned to her original report and described the incident as “nonconsensual,”

explaining “she had recanted her allegations of rape because she still loved Crider and was attempting to reconcile with him.” *Crider*, ¶ 12. The State sought leave for the victim to testify about an incident the prior year in which Crider had thrown her against a wall, slammed her head into the hood of his vehicle, and pushed her face into a gravel road, for which he was convicted of PFMA. *Crider*, ¶ 12. The district court admitted the evidence for the purpose of establishing motive or absence of mistake or accident, and gave a limiting instruction. *Crider*, ¶ 13. On appeal, we affirmed, reasoning the evidence was “admissible to show motive or absence of mistake or accident.” *Crider*, ¶ 28. In particular, the Court emphasized the necessity of showing “Crider’s motive to control or harass M.W.,” prompting his similar attack upon the victim. *Crider*, ¶ 28.

¶16 Palmer correctly notes that we have cautioned about the use of generalized motive as a basis for admission of prior act evidence. *See State v. Blaz*, 2017 MT 164, ¶ 15, 388 Mont. 105, 398 P.3d 247 (“general hostility or complete disregard for others, without more, would define motive very broadly and cast a wide net indeed for use of motive under Rule 404(b), potentially encroaching upon the impermissible use of motive as propensity evidence.”). However, as our precedent demonstrates, motive can rise to a specific hostility toward a certain individual that may provide a suitable basis for admission. That is the nature of the case here, where Palmer’s actions to control K.Y., including his threat to kill her, his psychological abuse, his isolation of her (by taking the phone and eliminating her ability to seek help), and covering her mouth when she was screaming, followed by periods of unification and professions of love, was part of a repeated cycle of abuse directed to his domestic, intimate partner, such as we recognized in *Haithcox* and was testified to by the

blind expert here. As explained by an authority cited by the State, domestic violence cases can provide an appropriate basis for admission of such motive evidence. *See* Edward J. Imwinkelried, *Uncharged Misconduct Evidence*, vol. 1, § 4.19, 4-104 (rev. ed. 2009) (for “acts of domestic violence [] directed against the same spouse or partner alleged in the pending charge [t]he trial judge can readily admit the evidence on a noncharacter motive theory[.]”). Additionally, there is the further appropriate basis we recognized in *Haithcox*, to provide context about the potentially unusual reactions of a domestic violence victim, in particular here, why K.Y. would decline to speak to police about what Palmer had done to her.

¶17 Palmer primarily argues Rule 404(b), but alternatively contends that, even if the evidence of his prior altercations with K.Y. was admissible for that purpose, the State’s inclusion of repetitious testimony about the prior incidents severely prejudiced his defense such that it substantially outweighed the probative value of the evidence, rendering it inadmissible under M. R. Evid. 403. Rule 403 provides that relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” The weighing of evidence, or balancing of its effects, is “fact-specific” and generally favors admission because “the risk of unfair prejudice must substantially outweigh the evidence’s probative value.” *State v. Murphy*, 2021 MT 268, ¶ 15, 406 Mont. 42, 497 P.3d 263.

¶18 We conclude that the highly probative value of demonstrating the cycle of domestic violence in which K.Y. was trapped was not significantly outweighed by its obvious

prejudice against Palmer. It provided context for understanding the pattern in which Palmer was engaged, and the reasons for K.Y.'s reactions to it.

¶19 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH

/S/ BETH BAKER

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON