

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 23-0380

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

SERENITY ALANA MANN,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana First Judicial District Court,  
Lewis and Clark County, The Honorable Christopher D. Abbott, Presiding

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## **STATEMENT OF THE ISSUES**

Whether the district court abused its discretion when it denied Appellant's motion in limine and permitted testimony of other acts involving the victim.

## **STATEMENT OF THE CASE**

The State charged Appellant Serenity Alana Mann (Mann) with strangulation of a partner or family member after she placed her girlfriend, S.R., in a "sleeper hold" causing her to "almost black out." (Docs. 3, 5.) Contained within the State's affidavit was a reference to Mann's statement obtained during the investigation in which Mann admitted she strangled S.R. using "a sleeper hold." (Doc. 3.)

Mann's first trial ended in a mistrial. (5/3/22 Tr. at 15.) After a second trial, the jury convicted Mann of strangulation of a partner or family member, the district court sentenced her to the Montana State Prison for five years, with all of that time suspended except for seven consecutive days in jail each year of the five-year sentence. (Doc. 105.) This Court granted an out-of-time appeal, and Mann now appeals the district court's ruling authorizing the State to introduce prior acts involving S.R.

## **STATEMENT OF THE FACTS**

### **I. The offense and investigation**

S.R. and Mann were in a romantic relationship for over 13 years. (12/20/22 Tr. at 42.) On November 16, 2021, Mann became angry at S.R. for talking to another person on Facebook. (*Id.* at 31.) Mann took S.R.'s phone away from her. (*Id.*) When S.R. regained the phone from Mann, S.R. attempted to leave the room. (*Id.*) Mann followed S.R. into the hallway and knocked her down. (*Id.*) Mann then put S.R. into a "choker hold." (*Id.*) Mann placed all of her 300-pound weight on S.R.'s back. (*Id.* at 32, 76-77.) S.R. described the pain from Mann's weight on her. (*Id.* at 32.) As Mann was squeezing S.R.'s neck, S.R. "saw black go over [her] eyes." (*Id.*) S.R. described that Mann was squeezing "so tight" that she "just wanted to die because of the pain wouldn't stop." (*Id.*) Mann then released S.R.'s neck and climbed off her back. (*Id.* at 34.)

S.R. did not call 911 or report the assault to law enforcement. (*Id.* at 36.) Instead, at approximately 10:47 p.m., she called her sister, M.R. (*Id.* at 35, 102.) The next day, M.R. returned S.R.'s call. (*Id.* at 102.) S.R. sounded very upset. (*Id.*) M.R. could tell that S.R. had been crying, and S.R. was speaking in a whisper. (*Id.*) M.R. picked S.R. up and brought S.R. to work with her. (*Id.* at 103-04.)

M.R. asked S.R. if everything was okay. (*Id.* at 112.) S.R. told her sister that Mann had taken her phone because she was talking to another person. (*Id.*) Mann

had deleted S.R.'s Facebook and blocked people. (*Id.*) When S.R. attempted to get the phone back, Mann had grabbed her and put her in a choke hold. (*Id.*) S.R. and Mann had stumbled while Mann had S.R. in the choke hold, and Mann had pushed S.R.'s back, causing her pain. (*Id.*)

On November 18, 2021, Lewis and Clark County Sheriff's Detective Jess Metcalf contacted S.R. and arranged to meet with her. (12/21/22 Tr. at 30-31.) S.R. had not contacted law enforcement.<sup>1</sup> (*Id.* at 31.) Detective Metcalf met with S.R. and M.R. in an Albertson's parking lot. (*Id.*) Detective Metcalf was unsure whether S.R. would report any abuse, but was hopeful she would. (*Id.*)

S.R. gave Detective Metcalf "a flood of information" during their initial meeting. (*Id.* at 32.) S.R. and M.R. met Detective Metcalf again at the Lewis and Clark County Sheriff's Office to give formal statements. (*Id.*) S.R. was "scared, tearful, frightened, concerned, [and] apprehensive" during her contact with Detective Metcalf. (*Id.* at 33.)

After the interviews, Detective Metcalf and another detective went to Mann's residence to speak with her. (*Id.* at 35.) Mann initially stated that she didn't know anything about an incident or argument with S.R. on November 16, 2021.

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<sup>1</sup> Although not discussed at trial, law enforcement learned of the domestic violence perpetrated by Mann during an unrelated assault investigation where Mann was the defendant, which led Detective Metcalf to contact S.R. The State did not seek to admit evidence of the unrelated assault against another victim during the trial. (*See* 4/28/22 Tr. at 16.)

(State's Ex. 4 at 2:26-2:53.)<sup>2</sup> Later, when detectives attempted to clarify Mann's statement that nothing happened on that date, Mann accused S.R. of throwing a phone at her during an "anger spat." (*Id.* at 3:41-3:55.)

Mann explained that she took S.R.'s phone because S.R. was talking to a guy on Facebook. (*Id.* at 3:55-4:32.) Mann accused S.R. of trying to bring this person into their relationship. (*Id.*) Mann stated she "sat there calmly" and told S.R. she would call the police if S.R. threw the phone at her again. (*Id.* at 4:39-4:50.) Mann denied hitting S.R. (*Id.* at 4:48-5:18.) She also denied being angry about the phone or angry that "[S.R.] was cheating on [her]." (*Id.* at 9:25-11:17.) Mann said that she had demanded S.R. give her the phone. (*Id.*) Mann described these events as "going on for a couple of weeks now." (*Id.* at 11:21-11:50.)

Mann then began describing an incident with striking similarities to S.R.'s disclosures. (*Id.* at 8:00-9:00.) Mann stated S.R. had been "getting really, really irritating agitated. I was getting agitated; she was getting irritating." (*Id.*) Mann described flinging herself out of bed, pushing S.R. down and grabbing S.R. around the throat. (*Id.*) Mann also described strangling S.R. as putting her "arm around her and just choking her." (*Id.*) Mann initially stated that had occurred "multiple years

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<sup>2</sup> A rough transcript of State's Ex. 4 can be found in Doc. 26.



ago.” (*Id.*) Later, Mann stated that the event occurred “multiple nights” and then “multiple years” ago. (*Id.* at 12:55-13:15.)

## **II. Procedural history and the first trial**

In the omnibus memorandum, the district court scheduled trial for Monday, May 2, 2022, and ordered that all briefing, including briefing related to evidence of other crimes, wrongs, or acts be completed by March 2, 2022. (Doc. 11.) On April 22, 2022, approximately ten days before trial, Mann filed a Notice of Objection of 404(b) Evidence. (Doc. 20.) The notice did not identify the acts Mann wished to exclude, nor the basis for the objection. (*Id.*) The district court held a hearing on Friday, April 28, 2022. (*See generally* 4/28/22 Tr.) With the trial quickly approaching, the district court heard oral argument on two issues. (*Id.*)

First, Mann argued that the recorded statement taken by law enforcement consisted of admissions related to a prior assault on the victim, not the charged conduct, and should be excluded. (*Id.* at 7-9.) The State disagreed and cited to the specific details in Mann’s admission that matched S.R.’s disclosures related to the November 16, 2021 assault. (*Id.* at 5.) The district court initially acknowledged that the State’s theory that Mann’s statement was an admission to the charged offense was relevant and admissible. (*Id.* at 18.)

Second, the State argued that some limited information related to prior threats and violence committed by Mann against S.R. was relevant under Mont. R. Evid. (Rule) 404(b) to show motive, power and control, and the reason S.R. did not report the offense to law enforcement. (*Id.* at 16-17, 25.) Mann did not address the State's second theory of admissibility in any detail during the hearing. The district court chastised Mann for failing to properly brief the issue as required in the omnibus memorandum, noting that the court was now in a difficult position to decide these issues without proper notice and information. (*Id.* at 17, 29.)

The State filed a written response the next day to assist the district court. (Doc. 27.) The State again argued that the recorded statement to law enforcement constituted an admission to the charged events, rather than a previous assault. (*Id.*) The State purposely limited itself in what sort of evidence it would introduce. (*Id.*) The State noted it was not seeking to introduce photos of the repeated black eyes S.R. had sustained at the hands of Mann. (*Id.*) The State also agreed not to introduce Mann's admissions related to other prior acts. (*Id.*) The State was only seeking to admit evidence related to prior strangulations of S.R. to demonstrate it was a method of control by Mann. (*Id.*)

On the morning of trial, the district court issued its written order. (Doc. 28.) Contrary to its position during the April 28, 2022 hearing, the court excluded parts of the recording where Mann discussed the "worst thing [she] has ever done to the

alleged victim” and the following description of the strangulation that the State believed constituted an admission. (*Id.*) The district court concluded that the remainder of the State’s proffered excerpts appeared to directly involve the phone incident and allowed the State to reasonably argue that those admissions were in fact related to the November 16, 2021 assault. (*Id.*)

The district court reserved ruling on any other issue related to the relationship between Mann and S.R. (*Id.*) The district court noted that “there is a certain amount of context to the allegations at issue here that the alleged victim will be allowed to provide, and it may come to pass that some of her relationship with Mann must be admitted for other purposes.” (*Id.*) In reserving its ruling, the district court recognized that “[t]he applicability of 404(b) to domestic violence cases can be complex.” (*Id.*)

S.R. was the first witness to testify. (5/2/22 Tr. at 179.) During the first trial, the State attempted to put forth the types of evidence it raised in its argument and subsequent brief to the district court regarding the power and control dynamic in the relationship between S.R. and Mann. (*Id.* at 185-206.) In a moment of frustration, when responding to Mann’s repeated objections, the State noted that the testimony of S.R. was relevant to talk about the “controlling nature of [the] relationship.” (*Id.* at 189.) This comment led Mann to move for a mistrial. (*Id.* at 190.) The district court found that without the proper briefing to frame the issues,

the court could not fully understand the scope of S.R.'s testimony. (5/3/22 Tr. at 5-6.) The court granted Mann's motion for a mistrial. (*Id.* at 15.)

### **III. Briefing related to Mann's prior bad acts**

Prior to the second trial, Mann filed a motion and brief to exclude evidence of other acts to clarify the district court's earlier order. (Docs. 57-58.) Mann again challenged the admissibility of her recorded statement to Detective Metcalf under Mont. R. Evid. 403 and 404(b), and added new areas related to her mental health and statements made to a case manager working with S.R. and Mann. (Doc. 58.)

The State replied that evidence of prior acts of domestic violence was admissible to show motive, intent, and knowledge. (Doc. 59.) Specifically, the State argued that the prior acts were admissible to show power and control and to help the jury understand why a victim might not report abuse or leave an abusive relationship. (*Id.* at 4.)

The State intended to elicit testimony from S.R. about the power and control Mann possessed in her relationship with S.R. (*Id.* at 7.) The State anticipated that S.R. would testify that Mann: 1) isolated her from family and friends; 2) had financial control over her; 3) required her to maintain the house and provide meals; 4) forced her to perform oral sex; 5) constantly physically abused her; 6) threatened to kill her, her family, and her pets if she disclosed the abuse to

anyone; and 7) strangled her when she was noncompliant with one of Mann's demands. (*Id.*) The State proffered that each of these areas would show the level of power and control Mann had over S.R. (*Id.*)

The district court issued a superseding order on the other acts evidence, finding, in relevant part, that the prior acts were admissible pursuant to Rules 403 and 404(b). (Doc. 87.) The district court allowed evidence of the prior acts, finding it was necessary to understand S.R.'s behavior after the assault and to show that Mann had sought to control S.R. (*Id.* at 8.) The district court agreed that neither of these theories depended on a character inference and instead would show the jury why both Mann and S.R. acted the way they did during and after the assault. (*Id.* at 9.)

The district court recognized that S.R.'s testimony during the first trial had the qualities of "script memory," where she would describe the relationship in terms of what "usually" happened. (*Id.* at 10.) The district court explained that script memory can be common in domestic and sexual abuse cases. (*Id.*) The trial court was concerned that requiring S.R. to excise these thoughts would make her testimony unintelligible to the jury. (*Id.* at 10-11.)

Although the district court allowed the State to provide evidence of power and control to explain Mann's and S.R.'s behavior surrounding the assault, it also limited the evidence and arguments that could be made. (*Id.* at 11.) The court

forbade the State from eliciting testimony about “any allegations of coercive, forcible, or nonconsensual sexual activity” as the allegations had little in common with the strangulation and could lead to the jury using the evidence for an impermissible purpose. (*Id.*)

The district court also limited the argument the State could make related to Mann’s previous strangulations of S.R. (*Id.* at 12.) The district court was concerned that arguing Mann would strangle S.R. when S.R. failed to comply with Mann’s demands was a more nuanced version of an impermissible propensity argument. (*Id.*) Neither S.R. nor the State were permitted to speculate or argue specifically why Mann strangled S.R. (*Id.*)

The district court strongly cautioned the State “to keep its use of other acts evidence limited and in service of the purpose of the trial—to prove whether Mann committed the offense of strangulation of a partner or family member on or about November 16, 2021.” (*Id.* at 13.) The court explained that the purpose of the other acts evidence was only to explain and contextualize S.R.’s account and the focus was to remain on the charged conduct. (*Id.*)

Finally, recognizing that courts should “seldom reconsider their prior orders,” the district court reversed its decision on Mann’s admissions to the strangulation obtained by Detective Metcalf, saying it had been “improvidently excluded.” (*Id.* at 13-14.) The court again cautioned the State that argument

regarding Mann's statements was to be limited, but allowed the State to introduce Mann's statements and argue that they were admissions to the charged strangulation. (*Id.* at 14.)

#### **IV. The second trial**

During the second trial, the State elicited the above testimony from S.R. regarding the assault. S.R. also testified that Mann had begun controlling the relationship almost immediately. (12/20/22 Tr. at 22.) After S.R. and Mann moved in together, Mann told S.R. she did not need to work at her job anymore. (*Id.* at 23.) Instead, S.R. had to help Mann with her job as a DoorDash driver. (*Id.* at 26.)

Before the State elicited any additional testimony, the court provided a limiting instruction to the jury. (*Id.* at 26; Doc. 96, Instr. 20.) After the instruction, S.R. testified that she cleaned the house based on Mann's orders, and if she failed to do so, she would be punished. (*Id.* at 29.) Mann would punish S.R. by punching her on her face, body, or head. (*Id.*) During these assaults, Mann would say that she could hurt S.R. and that she knew when she had to stop. (*Id.* at 32.)

Mann also controlled S.R.'s finances by way of her social security disability income and dictated what the money was spent on. (*Id.*) Mann isolated S.R., and forbade S.R.'s family from entering the house. (*Id.* at 30.) Mann required that S.R.'s family call before coming over, and S.R. would meet her family in the

parking lot. (*Id.*) Mann would regularly take S.R.’s phone to check who she was communicating with. (*Id.* at 48.) At times, Mann would delete S.R.’s contacts because she knew S.R. could not remember them. (*Id.* at 26.) S.R. felt trapped. (*Id.* at 30.)

S.R. testified that Mann had threatened her and her pets. (*Id.* at 36.) Mann had threatened that if S.R. made her mad, she would kill S.R.’s pets. (*Id.*) Mann also told S.R. that if S.R. ever turned her in to the police, she would “hunt [S.R.] down,” and if Mann ever went to jail, “she would put ten cuts in [S.R.’s] body for every day she stayed in jail.” (*Id.*)

The State did not elicit any testimony regarding prior strangulations during S.R.’s direct. (*See generally id.* at 19-49.) On cross-examination, Mann’s counsel suggested that S.R. was being inconsistent in her testimony regarding the assault. (*Id.* at 58-60.) Counsel suggested that S.R. initially disclosed Mann had punched her first. (*Id.* at 58.) During redirect and in response to counsel’s questions, the State clarified that S.R. had been interviewed about other times she was punched and strangled. (*Id.* at 69-71.) The State did not elicit any further details about prior strangulations or assaults from S.R. or any other witness. (*See generally id.* at 60-122; 12/21/21 Tr. at 1-94.) Furthermore, the State never referenced any of the prior assaults in its closing. (12/21/21 Tr. at 130-35.)



In addition to S.R., M.R., Detective Metcalf, and a strangulation expert, Gina Boesdorfer, testified at trial as a blind expert on domestic violence. As Boesdorfer explained, “domestic violence is a pattern of behavior that takes place within a relationship . . . what differentiates an abusive relationship is a power and control differential.” (12/20/21 Tr. at 80.) Boesdorfer continued, stating, “an offender in that relationship is going to have a significant amount of power and control and the victim is not going to have any power and control in the relationship.” (*Id.*)

When asked about her perspective on the general public’s understanding of domestic violence, Boesdorfer stated that “people hear domestic violence, and physical violence is what a lot of people think about, but the dynamics around emotion and psychological abuse or someone who has control tactics look quite different.” (*Id.* at 81.) Boesdorfer testified that “people often have a lot of misconceptions” about the people who stay or leave abusive relationships. (*Id.*)

Domestic violence “can be categorized as an ever-present fear of physical and sexual violence.” (*Id.*) Boesdorfer explained that when domestic violence is present in a relationship, “the likelihood of it happening again is much higher.” (*Id.* at 81-82.) In these relationships, there could be direct threats, intimidation or violence in other areas of their life. (*Id.*) Boesdorfer further explained that while control might mean physical violence, it can also include things like taking away a

victim's car keys or not allowing their partner to have access to employment or finances. (*Id.* at 82.) Ultimately, control “impedes somebody’s ability to make choices for themselves, to access certain supports [or] resources, to connect with friends, family, [or] other agencies[.]” (*Id.*)

Finally, Boesdorfer discussed why a victim might not leave an abusive relationship. (*Id.* at 87.) Boesdorfer explained to the jury that leaving a violent relationship is one of the most dangerous times for a victim, especially if the offender and the victim lived together. (*Id.*) In those cases, there are logistical and practical reasons for a victim not to leave. (*Id.* at 88.) Boesdorfer explained that it can be harder for a victim to leave if they share housing, kids, pets, or finances with their abuser. (*Id.*)

The district court admitted the recording of Mann’s statements relevant to the phone incident and the strangulation. (State’s Ex. 4.) The State elicited testimony from Detective Metcalf about the similarities between Mann’s admissions and S.R.’s statement. (12/21/21 Tr. at 43.) Finally, during closing arguments, the State argued that Mann’s statements to Detective Metcalf constituted an admission to the charged offense. (*Id.* at 135.)

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## **STANDARD OF REVIEW**

This Court reviews a district court’s ruling regarding the admission of other crimes, wrongs or acts for an abuse of discretion. *State v. Palmer*, 2024 MT 25, ¶ 10, 415 Mont. 150, 543 P.3d 566 (citing *State v. Crider*, 2014 MT 139, ¶ 14, 375 Mont. 187, 328 P.3d 612). This Court will leave a trial court’s ruling on the admissibility of evidence “undisturbed unless made arbitrarily without the employment of conscientious judgment or exceeding the bounds of reason, resulting in substantial injustice.” *State v. Stryker*, 2023 MT 63, ¶ 12, 412 Mont. 1, 527 P.3d 606 (internal quotations and citation omitted).

If the evidentiary ruling is based on the court’s interpretation of the Montana Rules of Evidence, this Court’s review is *de novo* for correctness. *State v. Madplume*, 2017 MT 40, ¶ 19, 386 Mont. 368, 390 P.3d 142.

## **SUMMARY OF THE ARGUMENT**

Mann has not established that the district court abused its discretion when it allowed testimony regarding her prior acts involving S.R., the victim of the instant offense. Mann’s other acts provided the jury with context for Mann’s and S.R.’s relationship and why S.R. did not immediately report the abuse to law enforcement. Mann’s other acts further highlighted that Mann maintained power and control over S.R., which provided a motive for her actions on November 16,

2021. Additionally, Mann's statements to law enforcement constituted an admission to the charged offense, not a reference to a prior act, and were therefore appropriately introduced into evidence. Accordingly, the district court did not abuse its discretion when it found that Mann's contested other acts were admissible pursuant to Rule 404(b) to demonstrate Mann's motive and give context to S.R.'s behavior.

Likewise, Mann has not established that the probative value of the prior bad acts evidence was substantially outweighed by a risk of unfair prejudice, and any such prejudice was limited by the district court's cautionary instruction.

Finally, even if the other acts evidence was improperly admitted, it constituted harmless error because when comparing the evidence qualitatively with the testimony of the November 2021 incident, there is no reasonable probability that the only reason the jury found Mann guilty of strangulation of a partner or family member was because of her prior bad acts.

### **ARGUMENT**

**I. The district court correctly denied the motion in limine and did not abuse its discretion when it permitted testimony regarding Mann's other acts.**

Evidence of Mann's conduct was admitted for permissible purposes and did not violate Mont. R. Evid. 404(b). Rule 404(b) provides 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. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” The rule does not bar evidence. Rather, it prohibits a “*theory of admissibility*: using evidence of other crimes, wrongs, or acts to prove the defendant’s subjective character, disposition, or propensity . . . in order to show conduct in conformity with that character on a particular occasion.” *State v. Dist. Court of the Eighteenth Judicial Dist.*, 2010 MT 263, ¶ 47, 358 Mont. 325, 246 P.3d 415 (hereinafter *Salvagni*) (italics in original). Rule 404(b)’s “prohibition applies only when that ultimate inference is coupled with the intermediate inference of the defendant’s personal, subjective character. If the prosecutor can arrive at an ultimate inference of conduct through a different intermediate inference, the prohibition is inapplicable.” *State v. Stewart*, 2012 MT 317, ¶ 65, 367 Mont. 503, 291 P.3d 1187 (quoting 1 Edward J. Imwinkelried, *Uncharged Misconduct Evidence* § 4:1, 4-5 to 4-6 (rev. ed. 2009)).

The list of permissible purposes for the admission of prior acts evidence in Rule 404(b) is “a non-exclusive list of permissible purposes that are not precise; rather, the categories are amorphous, overlapping, and dependent upon the underlying facts.” *State v. Blaz*, 2017 MT 164, ¶ 12, 388 Mont. 105, 398 P.3d 247. This Court has explained that “[t]he distinction between admissible and

inadmissible Rule 404(b) evidence turns on the intended purpose of the evidence, not its substance.” *Id.* (internal quotation marks and citation omitted). “[T]rial court[s] must ensure that any permissible use of evidence that could be barred under Rule 404(b) is ‘clearly justified and carefully limited.’” *State v. Flowers*, 2018 MT 96, ¶ 20, 391 Mont. 237, 416 P.3d 180 (quoting *State v. Aakre*, 2002 MT 101, ¶ 12, 309 Mont. 403, 46 P.3d 648).

**A. Evidence of Mann’s prior acts was admissible under Rule 404(b) to show motive and provide context for S.R.’s behavior.**

Evidence of other crimes or acts can be admitted under Rule 404(b) if it serves to demonstrate that “separate acts can be explained by the same motive.” *State v. Murphy*, 2021 MT 268, ¶ 13, 406 Mont. 42, 497 P.3d 263 (quoting *State v. Daffin*, 2017 MT 76, ¶ 19, 287 Mont. 154, 392 P.3d 150). “In some cases, the uncharged act will indeed furnish the motive for the charged act.” *Salvagni*, ¶ 59. “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.” *Id.* ¶ 59 (emphasis in original).

This Court reached a similar conclusion in *State v. Crider*, 2014 MT 139, 375 Mont. 187, 328 P.3d 612. In Crider’s trial for violently raping his girlfriend, this Court held that the trial court did not abuse its discretion when it admitted

testimony from the victim that he had previously assaulted her when she asked him to leave her house because of behaviors involving other women. *Crider*, ¶ 12.

This Court explained that a prior act does not need to give rise to a motive to be admissible under the motive theory. *Crider*, ¶ 25. Instead, a prior bad act may evidence the existence of a motive. *Id.* In those cases, the motive is the cause and both the prior acts and the act at issue are effects. *Id.* This Court concluded that Crider's prior acts of violence demonstrated his desire to maintain control over the victim. *Crider*, ¶ 26. The prior acts were admissible because "[t]he motive of exerting power and control is common to the prior acts admitted and is probative of Crider's motive as to the sexual acts at issue in this case." *Id.*

On appeal, Mann contends that "motive was not at issue until the State put it at issue." (Appellant's Br. at 23.) This Court has stated otherwise. This Court has long "held that evidence of motive is relevant for determining guilt or innocence." *State v. Enright*, 2000 MT 372, ¶ 22, 303 Mont. 457, 16 P.3d 366. While proof of motive is not necessary to prove mental state under Montana law, it is the State's burden to prove every essential element, including the requisite mental state, of a charged offense beyond a reasonable doubt. *State v. Patton*, 183 Mont. 417, 424, 600 P.2d 194, 198 (1979); *In re Winship*, 397 U.S. 358, 359-64 (1970); *see also* Mont. Code Ann. §§ 26-1-402, -403, 45-2-103(1). "Even though not an essential element of proof, the existence or non-existence of a motive to commit a charged

offense is generally a relevant consideration in the assessment of whether an accused had the requisite criminal mental state and was in fact the person who committed the alleged offense.” *State v. Lake*, 2022 MT 28, ¶ 28, 407 Mont. 350, 503 P.3d 274 (citations omitted).

This Court has previously cautioned against permitting other acts evidence for motive purposes when the State’s theory of admissibility was “general” in nature. *See, e.g., Blaz*, ¶ 15 (cautioning against admitting evidence of a defendant’s prior act of violence against another victim to show a motive of “general hostility”). As it pertains to domestic violence, however, this Court has reasoned that 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[.]” *State v. Palmer*, 2024 MT 25, ¶ 16, 415 Mont. 150, 543 P.3d 566 (citing Edward J. Imwinkelried, *Uncharged Misconduct Evidence*, § 4:19, 4-104 (rev. ed. 2009)). Specifically, the *Palmer* Court reaffirmed its decision in *State v. Haithcox*, 2019 MT 201, ¶ 19, 397 Mont. 103, 447 P.3d 452, that a separate appropriate basis for admission under Rule 404(b) was to provide context about the “potentially unusual reactions of a domestic violence victim,” including why a victim might not report to police. *Palmer*, ¶ 16.

Here, the evidence, especially in light of Boesdorfer’s testimony, allowed the jury to understand relationship dynamics, like Mann and S.R.’s, that involve



domestic violence. This included enabling the jury to understand the nature of domestic violence, to both explain Mann's motivation to assault S.R. and S.R.'s reluctance to report the abuse. Contrary to Mann's assertion a jury would understand reasons why a romantic partner might resort to violence over something as minor as a phone (Appellant's Br. at 30-31), Boesdorfer's testimony explained that the general public "often have a lot of misconceptions" about the power and control dynamic and about people who do not leave abusive relationships.

(12/20/21 Tr. at 81.)

Mann mischaracterizes the district court's order and the evidence that the jury heard during trial. As argued above, the State's theory of admission was connected to admissible purposes of power and control, as well as to assist the jury in understanding why a victim might not report the abuse. To that end, the State introduced evidence of Mann limiting S.R.'s independent employment, controlling S.R.'s income, and excluding S.R.'s family from the residence. (*Id.* at 23, 26, 29, 30.) In addition, the State elicited testimony about the ongoing threats to both S.R. and her pets, as well as the physical violence in the home that allowed Mann to maintain control over S.R. and prevented S.R. from reporting the abuse to law enforcement. (*Id.* at 29, 36.) The State provided more than "mere reference" to the permissible theory.

Just as in *Crider*, *Haithcox*, and *Palmer*, the district court did not abuse its discretion when it found that Mann’s other acts were admissible to demonstrate Mann’s motivation to use power and control over S.R. and to show why S.R. did not report to law enforcement.

**B. Mann’s statements about the strangulation were admitted for a nonpropensity purpose.**

To prevent the permissible uses from swallowing the general rule barring propensity evidence, a trial court must ensure that the use of Rule 404(b) evidence is “clearly justified and carefully limited.” *Aakre*, ¶ 12. As stated above, mere reference to a permissible purpose is insufficient for admission of other acts evidence under Rule 404(b). Other acts evidence is admissible for a permissible Rule 404(b) purpose only if “the proponent [can] clearly articulate how that evidence fits into a chain of logical inferences, no link of which may be the inference that the defendant has the propensity to commit the crime charged.” *State v. Clifford*, 2005 MT 219, ¶ 48, 328 Mont. 300, 121 P.3d 489 (internal quotation omitted).

Here, the State charged Mann with strangulation of a partner or family member, in violation of Mont. Code Ann. § 45-5-215(1)(a), which provides that “[a] person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by . . . applying pressure on the throat or

neck of the partner or family member.” (Doc. 1 (citing Mont. Code Ann. § 45-5-215(1)(a)).) The State is required to prove every element of an offense beyond a reasonable doubt. *See Patton*, 183 at 424, 600 P.2d at 198; *Winship*, 397 U.S. at 359-64; *see also* Mont. Code Ann. §§ 26-1-402, -403, 45-2-103(1).

The State proffered that Mann’s statements to Detective Metcalf constituted an admission to the charged strangulation, not a previous assault. (4/28/22 Tr. at 5; Docs. 27 at 1-2, 59 at 2.) “An ‘admission’ is defined as ‘an avowal or acknowledgement of a fact or of circumstances from which, together with other facts, guilt may be inferred.’” *State v. Goltz*, 197 Mont. 361, 369, 642 P.2d 1079, 1084 (1982) (quoting 22 C.J.S. *Criminal Law* § 730(a) (1961)). An admission does not acknowledge guilt; rather, it tends to establish guilt. *Goltz*, 197 Mont. at 369, 642 P.2d at 1084.

Although cloaked under Rule 404(b) in Mann’s argument and in the district court’s first order, the theory that Mann’s statements constituted an admission to the crime cannot be propensity, as it does not reference any “other act” Mann committed. Therefore, there can be no inference that Mann had the *propensity* to commit the crime charged, but rather, that she *in fact* committed the offense. However, even if this Court views Mann’s statements to Detective Metcalf under the umbrella of Rule 404(b), it is clear that the State’s proffered and argued theory was for a nonpropensity purpose.

In addition to the clear justification for the evidence, the district court carefully limited the State’s ability to present the evidence and argument related to the admissions. The district court precluded the State from speculating why Mann would strangle S.R., and prevented argument that Mann would strangle S.R. when S.R. failed to comply. (Doc. 87 at 15.) At trial, the State did not elicit any testimony about other, unrelated strangulations. (*See generally* 12/20/21 Tr. at 60-122; 12/21/21 Tr. at 1-94.) During closing arguments, the State argued Mann’s statements were in fact admissions to the offense, as permitted by the district court. (12/21/21 Tr. at 135; Doc. 87 at 14.) The district court did not abuse its discretion by allowing the jury to hear evidence of Mann’s admissions to the strangulation.

**II. The admission of evidence of Mann’s conduct did not violate Mont. R. Evid. 403.**

Even if evidence is relevant and is offered for a valid, nonpropensity purpose, the “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.” Mont. R. Evid. 403. The Rule 403 balancing test is “fact-specific,” *Murphy*, ¶ 15, and “[e]ven if evidence is potentially unfairly prejudicial, the Rule 403 balancing test favors admission—the risk of unfair

prejudice must *substantially outweigh* the evidence’s probative value.” *Stryker*, ¶ 19 (emphasis in original) (citing *Madplume*, ¶ 33); *Daffin*, ¶ 25; *Blaz*, ¶ 20.

“Evidence rises to the level of being unfairly prejudicial only ‘if it arouses the jury’s hostility or sympathy for one side without regard to its probative value, if it confuses or misleads the trier of fact, or if it unduly distracts from the main issues.’” *Madplume*, ¶ 33; *State v. Franks*, 2014 MT 273, ¶ 15, 367 Mont. 431, 335 P.3d 725 (Unfair prejudice occurs only “if ‘the nature of the evidence might tempt the jury to decide the case against the defendant on an improper propensity basis.’”) (quoting *Stewart*, ¶ 62).

However, as this Court has explained, while “[p]robative evidence is frequently prejudicial to the defendant; this does not make such evidence unfairly prejudicial, requiring exclusion.” *State v. Christensen*, 2020 MT 237, ¶ 113, 401 Mont. 247, 472 P.3d 622. The district court’s observation about the potential prejudice does not mean it “*substantially outweigh[ed]*” the evidence’s probative value. Mont. R. Evid. 403 (emphasis added). Indeed, this Court has noted that “precisely because [the evidence at issue] was highly probative it was therefore not unduly prejudicial.” *Christensen*, ¶ 113; *Blaz*, ¶ 20.

While Mann makes great efforts to paint this evidence as propensity evidence on appeal, when read in context, it is clear that the State was not asking the jury to find Mann guilty simply because she was an “abusive partner with a

propensity to hit and choke her girlfriend.” (Appellant’s Br. at 34.) As described above, Mann’s prior acts involving S.R. were highly probative of Mann’s awareness of, and motive for, her conduct with S.R. on November 16, 2021. Here, there was not a substantial risk that evidence about Mann’s conduct would cause unfair prejudice. The evidence was admissible because it explained the power and control dynamic in her relationship with S.R. and it was relevant to her motive to commit the instant offense. Additionally, Mann’s statement as to the strangulation was entered into evidence as a potential admission to the charged offense, not, as characterized by Mann, to encourage the jury to find Mann guilty because she had strangled S.R. before. The jury heard evidence from both S.R. and Boesdorfer as to why S.R. did not report the offense to law enforcement of her own accord. The evidence was not likely to cause a jury to believe she committed the November 2021 offense improperly or unfairly.

The district court correctly found that any risk of unfair prejudice could be minimized by the court giving the jury a limiting instruction pursuant to Rule 105. The district court took care that the jury was aware the other acts evidence could only be used for a limited purpose and no other. When S.R. testified and introduced evidence of Mann’s other acts, the court read the limiting instruction. Thus, the jury was put on alert and reminded of how to properly use this evidence. Mann has not shown that the district court made these decisions arbitrarily or that

it exceeded the bounds of reason, and cannot show substantial injustice as a result.

*See Stryker*, ¶ 12.

### **III. Even if the evidence of Mann’s other acts was erroneously admitted, the error was harmless.**

Finally, even if the admission of some of the evidence was an abuse of discretion, that error was harmless because it did not have any impact on the trial. A criminal case “may not be reversed by reason of any error committed by the trial court against the convicted person unless the record shows that the error was prejudicial.” Mont. Code Ann. § 46-20-701(1); *State v. Van Kirk*, 2001 MT 184, 306 Mont. 215, 32 P.3d 735.

To prove that an evidentiary error was harmless, the State must demonstrate that there is no reasonable possibility the inadmissible evidence might have contributed to the conviction. This Court has explained that “[t]o do this, the State must demonstrate that the fact-finder was presented with admissible evidence that proved the same facts as the tainted evidence and, qualitatively, by comparison, the tainted evidence would not have contributed to the conviction.” *Van Kirk*, ¶ 47. If no cumulative admissible evidence was presented, but the evidence in question did not prove an element of the crime, “then the State must demonstrate that, qualitatively, there is no reasonable possibility that the tainted evidence might have contributed to the defendant’s conviction.” *Id.*

Here, even if the evidence of Mann's prior acts was erroneously admitted, it did not have any effect on the outcome of the case. Plentiful evidence corroborated S.R.'s account of the instant assault. S.R. testified that she had been talking to another person on Facebook when Mann became angry and took S.R.'s phone. (12/20/22 Tr. at 31.) Mann corroborated these events in her statement to Detective Metcalf. (State's Ex. 4 at 3:43-5:16, 9:24-11:49.) When S.R. regained the phone from Mann and attempted to leave the room, Mann followed S.R. into the hallway, knocked her down, and placed her into a "choker hold." (12/20/22 Tr. at 31.) S.R. testified that she felt all of Mann's 300-pound weight on her back. (*Id.* at 32, 76-77.) S.R. described the pain from Mann's weight on her and that Mann was squeezing "so tight" she "just wanted to die because of the pain wouldn't stop." (*Id.* at 32, 34.) As Mann was squeezing S.R.'s neck, S.R. "saw black go over [her] eyes." (*Id.* at 32.) Mann then released S.R.'s neck and climbed off her back. (*Id.* at 34.)

At approximately 10:47 p.m., S.R. called her sister, M.R. (*Id.* at 35.) This was corroborated by M.R. and phone records. (*Id.* at 102; 12/21/22 Tr. at 35.) The next day, M.R. returned S.R.'s call and M.R. could tell that S.R. had been crying. (12/20/22 Tr. at 102.) After M.R. picked S.R. up, M.R. asked S.R. if everything was okay. (*Id.* at 103-04, 112.) S.R. told her sister that Mann had taken her phone because she was talking to another person. (*Id.*) Mann deleted S.R.'s Facebook and



blocked people. (*Id.*) When S.R. attempted to get the phone back, Mann grabbed her and put her in a chokehold. (*Id.*)

Accordingly, even if this Court determines that the district court erred by allowing some or all of the other acts evidence involving S.R., that error was harmless and Mann's right to a fair trial was not prejudiced.

### **CONCLUSION**

This Court should affirm Mann's conviction for strangulation of a partner or family member.

Respectfully submitted this 10th day of June, 2025.

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 6,814 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ *Selene Koepke*  
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## **CERTIFICATE OF SERVICE**

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