IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0586

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SEBASTIAN NATHANIEL BELCOURT,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John Kutzman, Presiding

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STATEMENT OF THE ISSUES

1. Whether the court abused its discretion when it excluded evidence under Mont. R. Evid. 403 that the victim posted on for-profit websites saying she had an interest in sexual fetishes that included submission, but did not include strangulation, when Belcourt was tried for strangulation and there was no evidence that offense involved a sexual encounter.

2. Whether the exclusion of evidence about the victim's online posts about her sexual interests violated Belcourt's right to present a defense.

STATEMENT OF THE CASE

The State charged Sabastian Nathaniel Belcourt with eight offenses, including strangulation of a partner or family member. (Docs. 1-2.) After amending the charges, the State proceeded to trial on the charges of strangulation, assault on a peace officer, unlawful restraint, and resisting arrest. (3/20/23 Tr. at 5, 7; Doc. 65.)

Before trial, Belcourt moved for a ruling on the admissibility of evidence that the victim, Rebecca, had posted content on paid websites in which she indicated that she was interested in numerous sexual fetishes. (Doc. 27.) After conducting a hearing on the issue, the court ruled that Belcourt could cross-examine Rebecca about whether she had previously indicated to Belcourt that she was sexually

interested in being strangled, but he could not admit evidence of online content indicating that Rebecca was interested in other sexual fetishes. (Doc. 67, available at Appellee's App. A.) At trial, Belcourt did not elicit any testimony about Rebecca's sexual interests or admit any evidence about a sexual encounter.

The jury found Belcourt guilty of strangulation, unlawful restraint, and resisting arrest, but found him not guilty of assault on a peace officer. (Doc. 81.) The court sentenced Belcourt to five years in prison and one year in jail for the three convictions. (Doc. 113, available at Appellant's App.)

STATEMENT OF THE FACTS

I. The offense

Belcourt and Rebecca were in a relationship for many years and had a daughter together. (3/20/23 Tr. at 262, 267.) On the morning of January 5, 2022, they got into a verbal argument, which was common. (*Id*. at 262.) Rebecca decided to leave to buy cigarettes. (*Id*.) When Rebecca returned, she sat in her car and smoked a cigarette, with the car running. (*Id*.)

Belcourt came out of the apartment and punched a window in the car, breaking through the window. (3/20/23 Tr. at 262.) Glass breaking from the window cut Rebecca. (*Id*. at 263.) He threatened to make her "go boom in the

car." (*Id*.) He reached into the car and tried to pull her out, but Rebecca was able to drive away. (*Id*.)

During the next hour, Rebecca went to a gas station and to Belcourt's uncle's house. (3/20/23 Tr. at 264.) Belcourt sent Rebecca text messages telling her she needed to get back to the gas station and return home with him. (*Id*.) She went to meet him at the gas station because her young daughter was with him. (*Id*.)

When Rebecca met Belcourt, he told her she had to leave with him or he would kill her, and if he could not be with her, she could not be anywhere. (3/20/23 Tr. at 265.) He repeated the threat to make her car "go boom." (*Id*.) She got into the car with him. (*Id*. at 266.) She later got out of the car because he made "very vulgar threats about wanting to kill me, that I didn't need to live if he couldn't have me, if he couldn't have me, nobody could." (*Id*. at 267.) She went to a hotel window, but when the person inside ignored her, she returned home. (*Id*.)

Rebecca was terrified that she was not going to make it through the night. (3/20/23 Tr. at 267.) She put her daughter to bed and she went to bed herself. (*Id*.) She woke up to Belcourt picking her up off the bed by her throat, while her daughter was asleep in a pack and play next to her. (*Id*.) He "was hovering above [her] with a very traumatizing look in his eye." (*Id*. at 268.) She was not able to

breathe or speak and believed he was going to kill her. (*Id*. at 268.) When she got enough air, she told him his daughter was right there. (*Id*. at 269.) He then released her. (*Id*.)

Rebecca was able to get away and run outside. (3/20/23 Tr. at 269.) She ran to the nearby gas station in her bare feet while it was 30 degrees below zero. (*Id*. at 270.) Rebecca called Belcourt's uncle, who picked her up. (*Id*. at 271.) She spent several hours with him and tried to come up with a plan to get her daughter away from Belcourt. (*Id*.)

During this time, Belcourt continued sending Rebecca threatening text messages, telling her that if he could not have her, nobody could. (3/20/23 Tr. at 272.) Rebecca decided that she should go back so she could be with her daughter. (*Id*.) Belcourt told her to go to the gas station, so she did. (*Id*.) When he arrived, he screamed at her and called her names. (*Id*.) She nevertheless went with him because he had her daughter. (*Id*. at 272-73.)

After that, Belcourt would not allow Rebecca to leave the apartment with her daughter. (3/20/23 Tr. at 273-74, 326.) Belcourt continued to make threatening comments to Rebecca, including a threat that he would cauterize her vagina with hot knives that he had on the stove. (*Id*. at 274, 276; *see also* State's Ex. 48.) He also told her she would not make it out of the apartment alive. (3/20/23 Tr. at

277.) One of the times he was standing over her, he kneed her in the nose, causing her to bleed profusely. (*Id*.)

Late in the evening on January 6, 2022, Belcourt left to get cigarettes. (3/20/23 Tr. at 278.) Rebecca texted a friend to try to develop an escape plan. (*Id*. at 277-78.) Belcourt was angry when he returned. (*Id*. at 278.) He picked Rebecca up by her throat and bent her in a way that made her believe he was trying to break her neck. (*Id*.) Rebecca feared that he would kill her, and she struggled to get away. (*Id*.) She passed out during the struggle. (*Id*. at 279.) Belcourt then threw Rebecca into a lamp. *(Id*.)

When Rebecca regained consciousness, her daughter was screaming. (3/20/23 Tr. at 279.) Rebecca told Belcourt she would make their daughter a bottle, and she went to the kitchen. (*Id*.) When Belcourt could not see Rebecca, she ran from the apartment and ran down to the laundry room in the basement, where she hid in a dryer. (*Id*.) She could hear him screaming as he was searching for her. (*Id*. at 280.)

Rebecca heard a door shut, which she thought was the sound of Belcourt going outside. (*Id*.) She got out of the dryer and went upstairs because she thought he was gone and hoped he had gone outside without his keys. (*Id*.) Instead, Belcourt was waiting for her upstairs at the edge of the stairway. (*Id*. at 280.) Belcourt grabbed Rebecca by the hair, dragged her back into the apartment,

and told her she was going to die. (*Id*.) They continued verbally fighting. Rebecca was feeling dazed because she was losing blood from a gash that she got on her chin when Belcourt threw her into the lamp. (*Id*. at 281.)

One of Belcourt and Rebecca's neighbors heard arguing coming from their apartment, and heard him say, "you don't think I'll do it." (3/20/23 Tr. at 329, 334-35.) Shortly after that, their baby's crying became louder and more alarming. (*Id*. at 329, 335.) The neighbor became concerned for the baby and called 9-1-1. (*Id*. at 335.)

When law enforcement approached the door, they heard an argument about whether to take somebody to the hospital. (3/21/23 Tr. at 13, 87-88, 111.) Officers knocked on the door, and Belcourt opened the door slightly to talk to them. (*Id*. at 13, 114.) He denied that there had been any disturbance. (*Id*. at 15, 76.) The officers noticed that Belcourt had dried blood on his hands. (*Id*. at 15, 76.)

Rebecca initially stayed in the apartment, but the officers asked her to come out. She had blood coming from her nose and had a split chin. (3/21/23 Tr. at 15, 30-31, 76.) Her neck was also very red or bruised, and she had other cuts and bruises on her face. (*Id*. at 32-34, 77, 116.) She told officers that Belcourt caused those injuries. (*Id*. at 15.) She also said he had thrown her to the ground and strangled her until she passed out. (*Id*. at 16-17, 117.) She looked terrified and was shaking, and her voice was quivering. (*Id*. at 16, 115-16.)

After talking to Rebecca, the officers informed Belcourt that he was under arrest. (*Id*. at 18-19.) Belcourt pulled back violently, pulling the two officers who had grabbed his arms into the apartment. Belcourt then engaged in a fight with three officers for several minutes, which included him repeatedly punching an officer. Eventually, an officer pulled out his baton, and Belcourt submitted to being arrested. (*Id*. at 19-25, 79-81, 119-33.)

The apartment was a mess, with objects all over the floor. (3/21/23 Tr. at 35.) The officers observed two Samurai swords hung on the wall, two butter knives that had been placed with their blades over a burner on the stove, a blowtorch, and a razor blade. (*Id*. at 34-35, 39, 94; State's Ex. 48.) The officers found a cell phone that had been broken into two pieces. (3/21/23 Tr. at 36.) Also, a window had been broken out of their car, consistent with Rebecca's assertion that Belcourt had punched out the window. (*Id*. at 42.)

At trial, Rebecca testified that during January 5 to 7, 2022, Belcourt strangled her twice, cutting off her ability to breathe both times and causing her to lose consciousness once. (3/20/23 Tr. at 326.) She had muscle damage after the second strangulation because of the way Belcourt had bent her neck. (*Id*. at 286.)

Belcourt did not testify or put on any evidence at trial. (3/21/23 Tr. at 147, 149-51.) During Belcourt's closing argument, his counsel argued that the State

had not proven the offenses beyond a reasonable doubt because Rebecca provided inconsistent statements. (*Id*. at 222-26.)

II. Pretrial ruling on the admissibility of Rebecca's online posts

Before the trial, Belcourt filed a Motion *in Limine*: Rape Shield, in which he stated that his defense at trial would be that "he placed his hands around [Rebecca's] throat with her consent during sex because she is an enthusiastic participant in BDSM (bondage, discipline, sadism, and masochism) relationships." (Doc. 27 at 2.) He sought to introduce evidence of her internet history to show that she had this interest to "corroborate[] his defense of consent." (*Id*.) Belcourt asserted that Rebecca had advertised sexually explicit videos of herself on the website FetLife and posted paid content on Fansly. (*Id*.) Belcourt attached screenshots in which Rebecca, using the screen name "wopchild," had stated that she was into collars, restraints, submission, and other sexual fetishes. (*Id*. at 3-4.) Strangulation was not listed as one of the sexual fetishes she was into. (*Id*.) Belcourt argued that although the Rape Shield Law excludes evidence of a victim's prior sexual history, evidence of Rebecca's interest in sexual fetishes should be admitted because he would be denied his right to a fair trial if the evidence was excluded. (*Id*. at 6-8.)

The State argued in response that the evidence should be excluded because: (1) Rebecca's sexual preferences were irrelevant to whether Belcourt strangled and

beat her; (2) the evidence was more prejudicial than probative; and (3) the evidence was protected by the Rape Shield Law. (Doc. 31.) The State explained that neither FetLife nor Fansly were designed for participants to meet up and engage in the behaviors discussed and nothing on the pages demonstrated that Rebecca engaged in the behaviors listed. (*Id*. at 3.) The websites were for online content only, and nothing on the websites indicated that Rebecca was interested in being strangled. (*Id*. at 5.) On one of the websites, participants could list strangulation as an interest, and Rebecca chose not to. (*Id*.) The State discussed this Court's cases on the Rape Shield Law, and argued the Rape Shield Law required the exclusion of the evidence.

In Belcourt's reply, he argued that if strangulation is done for sexual gratification, it is not a crime, so evidence that Rebecca engaged in consensual strangulation during sexual intercourse with Belcourt was relevant. He argued that the website information was potentially relevant to impeach Rebecca if she denied her interest in BDSM activity. (Doc. 33 at 2.) Belcourt asserted that his "proposed evidence is subject to the Rape Shield Law, but is not prohibited by it." (*Id*. at 3 (boldface removed).)

At the hearing, the court questioned whether consent could be a defense to strangulation under Mont. Code Ann. § 45-2-211. (2/23/25 Tr. at 4-9.) Belcourt asserted that he was not arguing consent as an affirmative defense. Instead, he said

he was arguing that he did not have the mental state required for the offense because his purpose was sexual and was not to impede Rebecca's airflow. (*Id*. at 6-10, 20.) The court explained that to be able to admit the proposed information about Rebecca's sexual interests, Belcourt would need to demonstrate "that there's a good faith basis for him to be able to claim that he might have thought that she would be turned on by [strangulation]." (2/23/23 Tr. at 16-17.)

The court also asked whether the Rape Shield Law applied in this case because no sexual offense was charged. (*Id*. at 17.) Belcourt's counsel stated that she had filed the motion regarding the Rape Shield Law in an abundance of caution and, even if the law applied, her proposed evidence should be admitted. (*Id*. at 18.) The court indicated that it would consider the admissibility under the Rape Shield Law, because that was how Belcourt had framed it, and under Mont. R. Evid. 403. (*Id*. at 20.)

Belcourt's counsel explained that her purpose was to elicit testimony from Rebecca about the relationship between strangulation and sex or, if Rebecca denied that, to use the information from the websites to impeach her. (*Id*. at 26-27, 31-32.)

The State, in contrast, argued that Rebecca's internet history should not be admitted because it did not relate to the history of sexual intercourse between Rebecca and Belcourt. (2/23/23 Tr. at 33-43.) The State argued that the evidence

was not even relevant and, if it was, it should be excluded under the spirit of the Rape Shield Law because it was unduly prejudicial. (*Id*. at 48-52.) The State repeatedly emphasized that nothing on the websites indicated that Rebecca was interested in being strangled. (*Id*. at 34, 37, 42-43, 49.) The State also explained that Rebecca participated in the two websites for profit, so Rebecca's statements about her interests on the websites might have been made to gain additional subscribers, and might not reflect her actual sexual interests. (*Id*. at 34-37, 42, 48.) In addition, the State noted that, according to Rebecca, the offenses did not involve any sexual conduct. (*Id*. at 44.)

At the conclusion of the hearing, the court denied Belcourt's motion without prejudice. (*Id*. at 58.) The court stated that if Belcourt had any information that Rebecca was interested in being strangled, he needed to file that under seal, and the court would revisit its ruling. (*Id*.) The court clarified that to prevail, Belcourt would "need to have some concrete basis for thinking that that shows that she was interested in having it done to her and that he knew about it." (*Id*.) The court explained that it was taking under advisement the issue of whether Belcourt would be allowed to ask Rebecca if there was any strangulation between them during sex, but the court was leaning against it. (*Id*. at 59.)

The court subsequently ordered that the FetLife and Fansly evidence was not admissible under Mont. R. Evid. 401 and 403. (Appellee's App. A.)

The court noted that the parties had argued the case under the Rape Shield Law, but the court observed that the Rape Shield Law states that it applies to "prosecutions under this part," and this case did not involve a prosecution for a sexual offense under Mont. Code Ann., Tit. 45, Pt. 5. (Appellee's App. A at 2, citing Mont. Code Ann. § 45-5-511(2)). The court noted that Rule 403 clearly applied and explained that the court had to "balance the tremendously prejudicial impact of the FetLife and Fansly evidence against Mr. Belcourt's right to a fair chance to discredit the Complaining Witness within the limits set by the law of evidence." (Appellee's App. A at 2.)

The court explained that if Belcourt's defense was that he strangled her to turn her on, evidence that he knew she was sexually interested in strangulation would be relevant, but evidence that he knew she was interested in other fetishes would not. And any evidence about things he did not know would be irrelevant because it would not establish his mental state. (*Id*.) The court suggested potential cross-examination questions that Belcourt could use to elicit testimony from Rebecca about whether she had indicated to Belcourt that she was interested in being strangled. (*Id*. at 3.)

The court concluded that "the FetLife and Fansly evidence clearly fails [the admissibility] test." (*Id*.) The court noted that the FetLife and Fansly evidence did not contain any evidence that Rebecca had expressed an interest in being strangled.

(*Id*. at 4.) The court observed that Rebecca's statements on the websites might not even reflect her interests since she made the statements for profit, but, even if those were her interests, those interests did not demonstrate that she had expressed an interest in being strangled. (*Id*. at 4 n.2.)

STANDARD OF REVIEW

A district court has broad discretion when determining the relevance and admissibility of evidence. Accordingly, this Court generally reviews evidentiary rulings for abuse of discretion. *State v. Lotter*, 2013 MT 336, ¶ 13, 372 Mont. 445, 313 P.3d 459. Where the district court ruling is based on its interpretation of a statute, this Court reviews the ruling de novo. *Id.* This Court's review of constitutional questions is plenary. *State v. Tome*, 2021 MT 229, ¶ 17, 405 Mont. 292, 495 P.3d 54.

SUMMARY OF THE ARGUMENT

Belcourt's proffered evidence about Rebecca's posts on FetLife and Fansly, in which she stated she was into sexual fetishes that included submission and collars, was not relevant for many reasons. Significantly, Rebecca never indicated on those websites that she was interested in being strangled. The websites also did not demonstrate Belcourt's knowledge about what Rebecca was interested in. The

evidence also could not be relevant because consent is not a defense to strangulation. Even if such evidence could be relevant in some cases, it would not have been relevant in this case where the evidence indicated that Belcourt impeded Rebecca's breathing or circulation during an argument, not a sexual encounter.

The evidence was also inadmissible under Rule 403 because any potential probative value was substantially outweighed by the danger of unfair prejudice to the victim and confusion of the issues. The evidence had the potential to make the jury less trustful of the victim for reasons that were unrelated to her propensity for truthfulness. By seeking to use the evidence, Belcourt improperly suggested that if the victim was into sexual fetishes, she must be willing to be strangled. That evidence distracted from the issue the jury needed to decide, which was whether Belcourt committed the elements of strangulation. Because the evidence was inadmissible under Rules 401 and 403, the district court's exclusion of the evidence was not an abuse of discretion.

Belcourt's discussion about the Rape Shield Law does not need to be considered because that was not the basis for the court's exclusion of the evidence. Nevertheless, the Rape Shield Law supports the exclusion of the evidence because it demonstrates that trials should not become a trial of the victim and the victim's sexual preferences are generally not relevant to whether an offense was committed.

Finally, the exclusion of the evidence did not violate Belcourt's right to present a defense because the evidence was excluded under the standard rules of evidence, and defendants do not have a right to admit evidence that is inadmissible under those rules.

ARGUMENT

I. The district court's exclusion of evidence of the victim's internet history under Mont. R. Evid. 401 and 403 was not an abuse of discretion.

Contrary to Belcourt's assertion, the court excluded evidence of Rebecca's internet history under Mont. R. Evid. 401 and 403, rather than the Rape Shield Law. (Appellee's App. A.) The court stated that it "doubt[ed] that the Rape Shield Statute applies here. But Rule 403—which imports a very similar balancing analysis—clearly *does* apply even if the Rape Shield Statute does not." (Appellee's App. A at 2 (emphasis in original).) Because the district court did not apply the Rape Shield Law, it is unnecessary to decide whether the Rape Shield Law applies in cases where no sexual offense has been charged.

Instead, the court correctly excluded the evidence under Rules 401, 402 and 403, which are the standard rules governing the admissibility of evidence. Under Rule 402, evidence that is not relevant is not admissible; evidence that is relevant is admissible unless excluded by another rule or law. Evidence is relevant if it has

"any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Mont. R. Evid. 401. Evidence that is relevant may be excluded under Rule 403 "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."

A. Evidence of Rebecca's online posts about sexual fetishes that did not include strangulation was not relevant.

The evidence about Rebecca's search history did not meet the relevancy threshold. To prove that Belcourt strangled Rebecca, the State had to prove he purposely or knowingly impeded her normal breathing or circulation by applying pressure on her throat or neck. Mont. Code Ann. § 45-5-215(1)(b). Evidence that Rebecca was interested in sexual fetishes that did not include strangulation would not make it more or less likely that Belcourt strangled Rebecca.

There were several problems with Belcourt's proposed evidence. First, the FetLife and Fansly evidence did not demonstrate that Rebecca had any interest in being strangled. (Appellee's App. A at 4.) Belcourt's counsel argued that evidence that she was into submissiveness and collars was sufficient. (2/23/23 Tr. at 56.) But the court correctly concluded that evidence that a person is interested in collars and submissiveness does not demonstrate that they want to have their airway cut off. (*See* Appellee's App. A at 4.)

Second, consent is not a defense to strangulation. Although consent is a defense under Mont. Code Ann. § 45-2-211(2), it is ineffective if "it is against public policy to permit the conduct or the resulting harm, even though consented to[.]" Mont. Code Ann. § 45-2-211(2). This Court has held that consent is not a defense to aggravated assault because "it is against public policy to permit a person purposely or knowingly to cause serious bodily injury to another, even though that conduct and the resulting harm were consented to." *State v. Mackrill*, 2008 MT 297, ¶ 23, 345 Mont. 469, 191 P.3d 451. Strangulation creates a significant risk of death, which is certainly against public policy. As a result, consent is not a defense to strangulation. Belcourt argued at the hearing that he wanted to use Rebecca's sexual interests to show that he did not have the purpose to cut off her airway, rather than to show that she consented. But even a strangulation done for sexual purposes involves cutting off a person's airway. Belcourt could not argue that Rebecca had an interest in being strangled without arguing that she wanted her airway cut off, and that is not a permissible defense.

Third, the posts did not demonstrate Belcourt's knowledge about what Rebecca was interested in. Belcourt did not provide an offer of proof demonstrating that he knew she was interested in being strangled because of the posts. (*See generally* 2/23/23 Tr. at 1-61.)

Fourth, Rebecca's posts on FetLife and Fansly were done for profit (2/23/23 Tr. at 35-37; Appellee's App. A at 4), so they did not establish that she had an actual interest in the fetishes she claimed she was interested in.

And fifth, there was no evidence of any sexual encounter in the charging documents or in the evidence presented at trial. (*See generally* Doc. 1; 3/20/23-3/21/23 Tr.) Instead, Rebecca asserted Belcourt strangled her once while she was sleeping and a second time while they were fighting about her use of her phone. (3/20/23 Tr. at 267-68, 278-79.) Her internet posts about sexual fetishes were not relevant to conduct Belcourt engaged in that was not sexual.

For all of these reasons, Rebecca's internet history did not make it more or less likely that Belcourt strangled Rebecca.

B. Even if Rebecca's internet history had some relevancy, the court did not abuse its discretion when it excluded the evidence because the alleged probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues.

The reasons why Rebecca's internet history was not relevant, discussed above, also demonstrate that the court did not abuse its discretion in excluding the evidence under Rule 403. Even if this Court concludes the evidence had some relevance, that was substantially outweighed by the danger of unfair prejudice and confusion of the issues.

The evidence had the potential to make the jury draw negative conclusions about the victim based on her interests that were unrelated to the case. The court described this problem well when the court stated that it believed Belcourt's purpose in offering the evidence was "to other [Rebecca], to depict[] her to the jury as weird and not somebody they should identify with and not somebody whose rights are worthy of protection." (2/23/23 Tr. at 38-39.) The evidence had the potential to unfairly prejudice the jurors against the victim and to confuse jurors who might have incorrectly believed that Belcourt was allowed to strangle Rebecca because she was interested in submission and collars.

Given the lack of probative value and danger of unfair prejudice, the court did not abuse its discretion when it excluded the evidence under Rule 403.

C. The Rape Shield Law also supports the court's ruling.

Montana's Rape Shield Law provides that "[e]vidence concerning the sexual conduct of the victim is inadmissible in" the prosecution of sexual crimes "except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease that is at issue in the prosecution." Mont. Code Ann. § 45-5-511(2). The statute specifically states that it applies to "prosecutions under this part," which refers to sexual offenses contained in Mont. Code Ann., Tit. 45,

Pt. 5. Mont. Code Ann. § 45-5-511(2). The court did not apply the Rape Shield Law because Belcourt was not being prosecuted for a sexual offense.

Nevertheless, the purpose of the Rape Shield Law demonstrates that the court did not abuse its discretion when it excluded Rebecca's online history. The Rape Shield Law is intended to "protect victims from being exposed at trial to harassing or irrelevant questions concerning their past sexual behavior." *State v. Awbery*, 2016 MT 48, ¶ 17, 382 Mont. 334, 367 P.3d 346. It "reflects a compelling state interest in keeping a rape trial from becoming a trial of the victim" and demonstrates "society's recognition that a rape victim's prior sexual history is irrelevant to issues of consent or the victim's propensity for truthfulness." *Awbery*, ¶ 17. This Court's analysis of the Rape Shield Law demonstrates that trials should not become a trial of the victim and the victim's past sexual history is irrelevant to the victim's propensity for truthfulness. That holds true even if the offense charged is strangulation, rather than a sexual offense. This analysis supports the court's conclusion that Rebecca's internet history was not admissible under Rule 403.

II. The exclusion of the evidence under Mont. R. Evid. 403 did not violate Belcourt's right to present a defense.

The right to present a defense "is subject to reasonable restrictions." *United States v. Scheffer*, 523 U.S. 303, 308 (1998). "[S]tate and federal

rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. Such rules do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" *Scheffer*, 523 U.S. at 308. The Supreme Court has also explained that "[t]he accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 410 (1988). Rule 403 is a "standard rule of evidence" with a counterpart in the federal rules of evidence. *Id*. Indeed, the Supreme Court has cited Fed. R. Evid. 403 and Mont. R. Evid. 403 as examples of "familiar and unquestionably constitutional evidentiary rules." *Montana v. Egelhoff*, 518 U.S. 37, 42 (1996).

The exclusion of Rebecca's internet history did not violate Belcourt's right to present a defense because the evidence was excluded under a well-established rule of evidence that permissibly excludes evidence when the probative value is substantially outweighed by the danger of unfair prejudice. Belcourt's theory at trial was that the State did not demonstrate beyond a reasonable doubt that he committed strangulation because Rebecca provided inconsistent statements. (3/21/23 Tr. at 222-26.) Evidence that Rebecca had previously posted on for profit websites that she was into submission and collars would not have been relevant to

whether he strangled her and did not provide a valid defense that he had a right to present.

III. Even if the court abused its discretion by excluding Rebecca's posts on FetLife and Fansly, the error would be harmless because overwhelming evidence demonstrated that Belcourt strangled Rebecca.

An error in the admission of evidence is trial error, which is subject to a harmless error analysis. *See State v. Van Kirk*, 2001 MT 184, ¶ 40, 306 Mont. 215, 32 P.3d 735. To demonstrate that the improper exclusion of evidence was harmless, the State must demonstrate that there was no reasonable possibility that the exclusion contributed to the conviction. *State v. Garding*, 2013 MT 355, 373 Mont. 16, 315 P.3d 912.

There is no reasonable possibility that evidence about Rebecca's sexual interests would have changed the outcome of this case because the evidence overwhelmingly corroborated Rebecca's statements. Most importantly, she had marks on her neck that were consistent with being strangled. (3/21/23 Tr. at 77, 116.) She also had a fearful demeanor consistent with being strangled. (*Id*. at 16, 115-16.) Other evidence was consistent with her assertions about her conflict with Belcourt, including evidence that her car window had been broken and her phone was broken in half. (*Id*. at 36, 42.)

Additionally, Rebecca stated that Belcourt strangled her once when she was asleep and a second time during an argument. Her sexual preferences would not have had any impact on the jury's determination about whether that occurred. For Belcourt's defense to make any sense, he would have had to acknowledge that he strangled Rebecca and claim that he thought she wanted him to do it. There is not a reasonable possibility that the jury would have found him not guilty under that defense because the record did not support that assertion and consent is not a defense to strangulation. Accordingly, the exclusion of the evidence would have been harmless even if it was erroneous.

CONCLUSION

Belcourt's convictions for strangulation, unlawful restraint, and resisting arrest should be affirmed.

Respectfully submitted this 10th day of November, 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 5,364 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Mardell Ployhar
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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0586

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SEBASTIAN NATHANIEL BELCOURT,

Defendant and Appellant.

APPENDIX

Cascade County Cause No. DC-22-027

CERTIFICATE OF SERVICE

I, Mardell Lynn Ployhar, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-10-2025:

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Electronically signed by LaRay Jenks on behalf of Mardell Lynn Ployhar
Dated: 11-10-2025