STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: February 12, 2025)

STATE OF RHODE ISLAND,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. P1-2020-1991ADV**
	:	
VICTOR COLEBUT,	:	
Defendant.	:	

DECISION

MONTALBANO, J. Before the Court are the State and Victor Colebut's (Mr. Colebut) Motions *in limine*. The State seeks to present evidence under Rule 404(b) of the Rhode Island Rules of Evidence concerning Mr. Colebut's alleged prior incidents of domestic violence. *See* State's Mot. in Lim. Mr. Colebut seeks to exclude portions of his police interview where he discusses prior incidents of domestic violence between himself and the decedent, Kristine Ohler (Ms. Ohler), pursuant to Rules 403 and 404(b) of the Rhode Island Rules of Evidence. *See* Def.'s Mot. in Lim.

I

Facts and Travel

Mr. Colebut is charged with: Count 1: Domestic Murder of Ms. Ohler; Count 2: Domestic Simple Assault and/or Battery, third or more offense; and Count 3: Criminal Violation of a No-Contact Order, third or more offense. (Grand Jury Indictment at 1-2.) Ms. Ohler was allegedly murdered sometime "between the evening of February 16, 2020 and the early morning of February 17, 2020" at Mr. Colebut's apartment located at 65 Fountain Street in Pawtucket, Rhode Island. *Id.* at 1. Mr. Colebut called emergency services on February 17, 2020. (State's Mem. in Opp'n of Mot. to Suppress, Aug. 7, 2024 at 2.) When police officers arrived on scene, they discovered Ms.

Ohler unresponsive and Mr. Colebut "in [Ms. Ohler's] presence." *Id.* at 7. There was an active no-contact order prohibiting Mr. Colebut from being in Ms. Ohler's presence. *Id.* at 4. Ms. Ohler died later that morning. *Id.* Mr. Colebut was charged with Domestic Murder, degree unspecified, (Count 1) for allegedly killing Ms. Ohler, Domestic Simple Assault and Battery (Count 2) for allegedly assaulting Ms. Ohler, and Criminal Violation of the No-Contact Order (Count 3) for being in Ms. Ohler's presence in violation of the active no contact order. (Grand Jury Indictment at 1-2.)

On December 2, 2024, the State filed its motion *in limine*. *See* State's Mot. in Lim. Mr. Colebut filed an answer to the State's motion *in limine* (Def.'s Answer to State's Mot. in Lim.) *pro se* on December 10, 2024. *See* Def.'s Answer to State's Mot. in Lim. Attorney Elizabeth Payette entered her appearance on behalf of Mr. Colebut on January 24, 2025 and subsequently filed a supplemental memorandum in response to the State's motion *in limine* on January 31, 2025. *See* Def.'s Suppl. Mem. Obj. to State's Mot. in Lim. On February 1, 2025, the State filed its Reply. *See* State's Reply. In its memorandum, the State seeks to introduce evidence of prior instances of domestic violence between Mr. Colebut and Ms. Ohler to (1) show Mr. Colebut's alleged intent to kill Ms. Ohler and/or rebut his claim that Ms. Ohler's death was an accident or mistake; and/or (2) present the complete narrative or picture of the alleged violent and tumultuous domestic relationship between Mr. Colebut and Ms. Ohler to demonstrate intent, motive, or plan.

On February 4, 2025, Mr. Colebut, through counsel, filed his motion *in limine* to preclude the introduction of portions of his statement to police after his arrest under Rules 403 and 404(b). *See* Def.'s Mot. in Lim. The State filed its objection to Mr. Colebut's motion *in limine* on February 5, 2025. *See* State's Obj. to Def.'s Mot. in Lim. In Mr. Colebut's memorandum, he seeks to exclude

portions of his statement to police after his arrest referencing prior instances of domestic violence between Mr. Colebut and Ms. Ohler. *See* Def.'s Mot. in Lim.

The Court heard testimony and oral arguments on these motions on February 2, 2025 and on February 7, 2025.

II

Arguments

A. State's Motion *in Limine*

The State seeks to introduce evidence of prior instances of alleged domestic violence between Mr. Colebut and Ms. Ohler. (State's Mot. in Lim 1.) In particular, the State seeks to introduce evidence of police encounters with Ms. Ohler and Mr. Colebut on August 18, 2019 and January 17, 2020, neighbors' observations of the couple in the months before Ms. Ohler's death, and an incident on February 16, 2020. *Id.* at 1-3. The State alleges this evidence is admissible to prove Mr. Colebut's intent to kill Ms. Ohler, to rebut any argument that Ms. Ohler's death was an accident or a mistake, and to create a "complete narrative or picture" of Mr. Colebut and Ms. Ohler's relationship. *Id.* at 1.

B. Mr. Colebut's Objection to State's Motion *in Limine*

Mr. Colebut initially filed an answer to the State's Motion *in limine pro se* arguing that the State's motions are invalid because he did not intend on testifying and "stipulate[d] he was not around Kristine Candace Ohler when she died[.]" (Def.'s Answer to State's Mot. in Lim., 1.) In the supplemental memorandum, Mr. Colebut argues that the Court should deny the State's motion because (1) the alleged prior bad acts are being offered to demonstrate propensity; (2) Mr. Colebut will not be claiming that he "mistakenly or accidentally harmed Ms. Ohler," so the evidence will not be admissible to prove absence of mistake; (3) the evidence is inadmissible hearsay and would violate Mr. Colebut's Sixth Amendment rights; (4) allowing the evidence would create collateral

issues that "would unfairly burden the defendant, confuse the jury, and distract from the central issue of the case[;]" and (5) the prejudicial effect of this evidence would substantially outweigh any probative value. (Def.'s Suppl. Mem. Obj. to State's Mot. in Lim. 1-4.)

C. Mr. Colebut's Motion *in Limine*

Mr. Colebut seeks to exclude specific portions of his statement to police after his arrest that reference prior violent incidents between himself and Ms. Ohler. *See* Def.'s Mot. in Lim. Mr. Colebut argues that "admitting these statements would allow the jury to convict Mr. Colebut based on inadmissible character evidence instead of proper, admissible evidence presented by the State" in violation of Rule 404(b). *Id.* at 1. Further, Mr. Colebut argues that the evidence is inadmissible because "[e]ven assuming, arguendo, that the evidence has some minimal probative value, it is overwhelmingly outweighed by its prejudicial effect, in violation of Rule 403." *Id.*

D. State's Objection to Mr. Colebut's Motion *in Limine*

The State argues that Mr. Colebut's statements are admissible nonhearsay evidence as they are statements by a party opponent, citing Rule 801(d)(2) of the Rhode Island Rules of Evidence. (State's Obj. to Def.'s Mot. in Lim 1.) The State also reiterates that Mr. Colebut's statements are admissible under Rule 404(b) as proof of Mr. Colebut's intent to kill Ms. Ohler and to show absence of mistake or accident with regard to Ms. Ohler's death. *Id.* at 2. Further, the State emphasizes that these statements concerning prior domestic violence incidents are admissible because these prior acts are interwoven with the charged offenses and would provide the jury with a complete story of Mr. Colebut and Ms. Ohler's relationship, assisting the jury in making an accurate determination of Mr. Colebut's guilt or innocence. *See id.*

III

Standard of Review

Relevant evidence is "evidence having 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." R.I. R. Evid. 401. Relevant evidence is admissible "except as otherwise provided by the Constitution of the United States, by the constitution of Rhode Island, by act of congress, by the general laws of Rhode Island, by [the Rules of Evidence], or by other rules applicable in the courts of this state." R.I. R. Evid. 402.

Rule 404 provides special rules in the context of character evidence, which is "[e]vidence of a person's character or a trait of the person's character[.]" R.I. R. Evid. 404(a). This kind of evidence "is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion[.]" *Id.* However, the evidence can be used for other purposes. *See* Rule 404(a)(1-3); 404(b). Rule 404(b) clarifies that:

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or to prove that defendant feared imminent bodily harm and that the fear was reasonable." R.I. R. Evid. 404(b).

The Rhode Island Supreme Court explained in *State v. Gomes*, 690 A.2d 310 (R.I. 1997) that

> "[e]vidence of other crimes or bad acts is usually considered so prejudicial that it is per se inadmissible regardless of any relevancy that it might have to show the propensity of a defendant to have committed the charged crime . . . . Two exceptions to this general rule of legal relevancy have been accepted in Rhode Island. First, if the prior incidents are interwoven with the charged offense they are admissible . . . . to allow a trier of fact to hear a complete and, it is to be hoped, coherent story so as to make an accurate determination of guilt or innocence. Second, evidence may be admissible under Rule 404(b) if it tends to show guilty knowledge, intent, motive,

> preparation, plan, or identity on the part of a defendant." *Gomes*, 690 A.2d at 316.

However, a trial justice can exclude relevant evidence if the "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." R.I. R. Evid. 403. Critically, "Rule 403 . . . cuts across the rules of evidence and is always a consideration in a trial justice's ruling on the admissibility of Rule 404(b) evidence[.]" *State v. Reverdes*, 295 A.3d 770, 784 (R.I. 2023) (internal quotation omitted).

IV

Analysis

A. August 18, 2019 Incident

The State first seeks to introduce evidence that Pawtucket Police responded to an emergency call at "63/65 Fountain Street" on August 18, 2019. (State's Mot. in Lim. 2.) When police officers arrived on-scene they allegedly discovered Ms. Ohler naked and distraught in the backyard of the residence. *Id.* While police officers were attempting to gather more information from Ms. Ohler "[s]he shouted several times, 'he said he was gonna beat my ass' . . . I was hiding in the basement.'" *Id.* at 11. "When police [officers] asked Ms. Ohler who threatened her, she stated 'Victor.'" *Id.* The State also seeks to introduce testimony from Mr. Colebut's neighbors, Stacey Prevost (Ms. Prevost) and Erica Walton (Ms. Walton), who found Ms. Ohler hiding in the basement on August 18, 2019 and called the police. The State alleges that this evidence is admissible because this incident is "interwoven with the charged offense and would allow the jury to hear the complete story of the troubled relationship and weigh the Defendant's intent" to kill Ms. Ohler. *Id.* at 5. Further, the State emphasizes that Mr. Colebut has been charged "with murder, the degree unspecified." *Id.* at 4. As such, "[i]t will be up to the jury to decide whether the

defendant acted with the necessary premeditation to convict the defendant of murder in the first degree." *Id.* The State stresses that to prove either first- or second-degree murder, it must show Mr. Colebut "killed Ms. Ohler voluntarily, intentionally, *and not by accident or mistake*." *Id.*

Mr. Colebut argues that the August 18, 2019 incident is being used to "suggest that Mr. Colebut must have killed Ms. Ohler because he had been alleged to have been violent toward her in the past." (Def.'s Suppl. Mem. Obj. to State's Mot. in Lim. 1-2.) He further argues that the purpose of introducing this evidence is to "prejudice the jury against Mr. Colebut by introducing impermissible propensity evidence, which is expressly prohibited under Rule 404(b)." *Id.* at 2. Further, Mr. Colebut argues that "[t]he responding officers' testimony is based entirely on hearsay statements made by an intoxicated Ms. Ohler" for the purpose of prosecuting Mr. Colebut, making the statements "testimonial and inadmissible under *Crawford v. Washington*, 541 U.S. 36 (2004)." *Id.* at 2-3.

1. Rule 404(b) Admissibility

"Rule 404(b) evidence may be admissible as proof of intent[, motive, plan,] or absence of mistake or accident, in which case 'admitting the evidence allows 'a trier of fact to hear a complete and, it is to be hoped, coherent story so as to make an accurate determination of guilt or innocence.'" *State v. Brown*, 900 A.2d 1155, 1161 (R.I. 2006) (quoting *State v. Parkhurst*, 706 A.2d 412, 424 (R.I. 1998)). In *Brown*, the defense theory was that the defendant lacked intent to hurt the victim and that "any injuries she suffered were either accidental or self-inflicted." *Id.* Our Supreme Court found that "[t]he admission of evidence that defendant had assaulted [the victim] on previous occasions and had engaged in an escalating pattern of domestic violence tended to establish defendant's intent to harm [the victim] on the two occasions for which he was standing trial." *Id.* Here, Mr. Colebut has alleged on more than one occasion that Ms. Ohler's death was

due to medical error or neglect. Thus, the State should be able to rebut the assertion that Ms. Ohler's death was accidental. Further, evidence alleging that Mr. Colebut and Ms. Ohler had a tumultuous relationship with a pattern of escalating violence is relevant to prove a necessary element of the murder charge, specifically, that Mr. Colebut killed Ms. Ohler voluntarily, intentionally, and not by accident or mistake.

2. Rule 403 Admissibility

"'Rule 403 may be invoked to exclude evidence that is prejudicial to defendant to the extent that the negative effect outweighs its probative value. Such evidence is rendered inadmissible if it is prejudicial and irrelevant." *State v. Grayhurst*, 852 A.2d 491, 505 (R.I. 2004) (quoting *State v. Grundy*, 582 A.2d 1166, 1172 (R.I. 1990)). However, "'[t]he mere fact that such evidence is prejudicial to a defendant does not render it inadmissible.'" *Brown*, 900 A.2d at 1164 (quoting *Parkhurst*, 706 A.2d at 424).

In *Brown*, our Supreme Court held that discussions of prior incidents of uncharged domestic assaults were not overly prejudicial and did not confuse the jury when the level of detail of the prior uncharged conduct "was not excessive" and the trial justice instructed the jury directly after the testimony about "the distinction between charged and uncharged offenses and the permissible and impermissible ways the jury could treat the . . . information." *Id.* Evidence that Mr. Colebut allegedly threatened to harm Ms. Ohler on August 18, 2019 is likely prejudicial; however, the Court finds that the evidence's probative value is not outweighed by its prejudicial effect and, therefore, the evidence is admissible.

3. Hearsay

"It is well settled that out-of-court statements offered for their truth are inadmissible unless a recognized exemption or exception applies." *State v. Aponte*, 317 A.3d 745, 750 (R.I. 2024). In this case, the State is seeking to admit Ms. Ohler's statements on August 18, 2019 to the effect that Mr. Colebut threatened her, and the statements are clearly hearsay and therefore, are inadmissible unless they fall under a stated exception.

"Under Rule 803(2) [of the Rhode Island Rules of Evidence], an excited utterance is '[a] statement relating to a startling event or condition made *while the declarant was under the stress of excitement caused by the event or condition*.'" *Id.* at 752 (quoting R.I. R. Evid. 803(2)). "'The rationale behind the excited utterance exception is that a startling event may produce an effect that temporarily stills the declarant's capacity of reflection and produces statements free of conscious fabrication.'" *Id.* (quoting *State v. Oliveira*, 961 A.2d 299, 314 (R.I. 2008)). "A statement need not have been 'strictly contemporaneous with the startling event' for it to be admissible as an excited utterance." *Id.* (quoting *State v. Momplaisir*, 815 A.2d 65, 70 (R.I. 2003)). "The test is whether, from a consideration of all the facts, the declarant 'was still laboring under the stress of excitement caused by the event when he or she made the statement at issue.'" *Id.* (quoting *State v. Morales*, 895 A.2d 114, 120 (R.I. 2006)). Further, "[e]vidence of the declarant's demeanor may be necessary to determine whether a statement was a 'spontaneous verbal reaction.'" *Id.* at 753 (quoting *State v. Jalette*, 119 R.I. 614, 621-22, 382 A.2d 526, 530-31 (1978)).

Ms. Ohler's statements on August 18, 2019 fall under the excited utterance exception to hearsay because she was described as distraught and shouting in the backyard about how "he was gonna beat my ass" and that she had been "hiding in the basement." (State's Mot. in Lim. 11.) She appeared to be under the stress of the excitement caused by the alleged incident with Mr. Colebut.

Further, the fact that Ms. Ohler was naked and screaming in the backyard supports the conclusion that this was clearly a spontaneous verbal reaction.

Mr. Colebut argues that Ms. Ohler's apparent intoxication renders her statements unreliable and, thus, inadmissible. While our Supreme Court has not explicitly ruled on the impact of a declarant's apparent intoxication in the context of the excited utterance exception to the hearsay rule, courts in other jurisdictions consider intoxication as a factor to weigh with regard to the declarant's credibility in making a determination as to whether a statement falls under the exception. *See United States v. Two Shields*, 497 F.3d 789, 795 (8th Cir. 2007) ("The district court acted entirely within its discretion in treating [the declarant's] extreme intoxication as one consideration" in its analysis of whether the statement fell under the excited utterance exception to hearsay.); *see United States v. Water*, 413 F.3d 812, 818 (8th Cir. 2005) (witness's statement to police five minutes after shooting was admissible through excited utterance exception to hearsay rule where, although witness was intoxicated, he had no motive to lie). Here, Ms. Ohler's behavior was erratic; however, her comments make clear that her agitated state was caused by Mr. Colebut's actions. Under these circumstances, the Court finds that Ms. Ohler's apparent intoxication on August 18, 2019 does not render her statements unreliable and that her statements constituted an excited utterance.

4. Confrontation Clause

"'Both the Sixth Amendment to the United States Constitution (through the Fourteenth Amendment) and article 1, section 10, of the Rhode Island Constitution guarantee individuals accused of criminal charges the right to confront and cross-examine any adverse witnesses who testify against them.'" *State v. Roscoe*, 198 A.3d 1232, 1244-45 (R.I. 2019) (quoting *State v. Dorsey*, 783 A.2d 947, 950 (R.I. 2001)). "The United States and Rhode Island Constitutions bar

the admission of 'testimonial statements . . . [by an unavailable witness unless] the defendant had . . . prior opportunity for cross-examination.'" *Id.* at 1246 (quoting *Crawford*, 541 U.S. at 53-54). "A statement is testimonial if its 'primary purpose . . . is to establish or prove past events potentially relevant to later criminal prosecution.'" *Id.* (quoting *Davis v. Washington*, 547 U.S. 813, 822 (2006)). "Testimonial statements include those 'that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial[.]'" *Id.* (quoting *Crawford*, 541 U.S. at 52). However, "'[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.'" *State v. Pompey*, 934 A.2d 210, 214 (R.I. 2007) (quoting *Davis*, 547 U.S. at 822).

Rule 804 of the Rhode Island Rules of Evidence provides that "[u]navailability as a witness" includes a situation in which the declarant "is unable to be present or to testify at the hearing because of death[.]" R.I. R. Evid. 804(a); 804(a)(4). Rule 804 further describes that "[a] declaration of a deceased person shall not be inadmissible in evidence as hearsay if the court finds that it was made in good faith before the commencement of the action and upon the personal knowledge of the declarant." R.I. R. Evid. 804(c). Mr. Colebut is unable to cross-examine Ms. Ohler with regard to her statements on August 18, 2019 because she is deceased. Consequently, her statements to police officers may only be admitted if they are considered nontestimonial. Ms. Ohler's statements must have also been made in good faith before the commencement of the action and upon her personal knowledge. The police report makes clear that police officers responded to the residence "for the report of a disturbance between a male and a female." (State's Ex. 22, Police Report for Aug. 18, 2019.) Once the police officers arrived, they discovered a naked and distraught Ms. Ohler. *Id.* While she appeared uninjured and had signs of intoxication ("her speech was slurred

and her eyes were watery"), she was able to communicate to the officers that "he said he was gonna beat my ass . . . I was hiding in the basement." *Id.* When asked, she clarified that the man who threatened her was Mr. Colebut. *Id.* From these facts, it appears that the police were trying to respond to an ongoing emergency and determine whether there was an assailant that needed to be apprehended. It does not appear that this line of questioning was designed to be used later at trial, but rather to assist the police officers in responding to an ongoing emergency. Accordingly, this Court finds that the statements are nontestimonial. The Court further finds that Ms. Ohler's statements on August 18, 2019 were made in good faith before the commencement of the action and upon her personal knowledge. Consequently, her statements on that date are admissible.

B. January 17, 2020 Incident

The State also seeks to introduce evidence that on January 17, 2020, a previously unidentified woman "called [911] and reported that 'there [wa]s a guy beating the crap out of some girl on [Dexter] [s]treet . . . she is screaming.'" (State's Mot. in Lim. 2.) "The caller described the assailant as a black or Spanish male, wearing pants with paint on them and a skull cap." *Id.* Pawtucket Police officers responded while the unidentified woman was still speaking with the 911 dispatcher. *Id.* The caller confirmed that the responding Pawtucket Police officers started speaking with "the assailant" who was later identified as Mr. Colebut. *Id.* at 2-3. The responding Pawtucket Police officers observed Ms. Ohler with "a large 'knot on the top of her forehead'" and noted that she "came running up to [the officer], flustered and screaming, and" identified Mr. Colebut. *Id.* at 2. Ms. Ohler told police that Mr. Colebut "became upset with her and punched her in the head and ripped a jacket off her person." *Id.* at 3. As a result of this incident, Mr. Colebut was charged with domestic simple assault and battery, third or subsequent offense, and domestic disorderly conduct, and a no-contact order was issued, prohibiting Mr. Colebut from being in Ms. Ohler's presence.

Id. This no-contact order was active at the time of Ms. Ohler's death. *Id.* The State is seeking to introduce the 911 caller's (now known as Dawn Munzey (Ms. Munzey)) statements, as well as testimony from the responding police officer, Officer Jason Lafond (Officer Lafond). Mr. Colebut argues that the State is using the evidence of the January 17, 2020 incident for a nonpermissible propensity purpose, that the incident's probative value is substantially outweighed by its prejudicial effect, and that Ms. Munzey's statements are inadmissible hearsay. (Def.'s Suppl. Mem. Obj. to State's Mot. in Lim. 1.)

On February 7, 2025, Ms. Munzey testified about her 911 call on January 17, 2020. *See generally* Hr'g Tr., Feb. 7, 2025. She testified that she heard a woman screaming and observed a man raising and lowering his right fist. *Id.* at 7:8-18. The man was facing away from her and her view was partially obscured by another parked car. *Id.* at 7:13-14; 7:25-8:1. Ms. Munzey testified that she called 911 and began relaying what she observed. *Id.* at 9:5-7.

1. Rule 404(b) Admissibility

"Rule 404(b) evidence may be admissible as proof of intent or absence of mistake or accident, in which case 'admitting the evidence allows a trier of fact to hear a complete and, it is to be hoped, coherent story so as to make an accurate determination of guilt or innocence.'" *Brown*, 900 A.2d at 1161 (quoting *Parkhurst*, 706 A.2d at 424). In *Brown*, the defense theory was that the defendant lacked intent to hurt the victim and that "any injuries she suffered were either accidental or self-inflicted." *Id.* Our Supreme Court found that "[t]he admission of evidence that defendant had assaulted [the victim] on previous occasions and had engaged in an escalating pattern of domestic violence tended to establish defendant's intent to harm [the victim] on the two occasions for which he was standing trial." *Id.* Further, our Supreme Court has held that the admission of uncharged acts was proper when "the uncharged acts were related so closely in both time and place

to the charged acts . . . committed by the defendant and were so intricately interwoven with the charged acts . . . ." *State v. Morey*, 722 A.2d 1185, 1189 (R.I. 1999); s*ee State v. Peltier*, 116 A.3d 150, 154 (R.I. 2015) ("Evidence of prior acts is admissible when the 'prior acts are interwoven or in instances when introduction is necessary for a trier of fact to hear a complete and, it is to be hoped, coherent story so as to make an accurate determination of guilt or innocence.'") (quoting *State v. Clay*, 79 A.3d 832, 838 (R.I. 2013)).

The incident on January 17, 2020 occurred exactly one month before Ms. Ohler's death. This incident indicates an alleged pattern of escalation of domestic violence, one that the jury is entitled to hear. It is necessary to show a complete and coherent story of the relationship between Mr. Colebut and Ms. Ohler. Further, the State has the burden of proving that Mr. Colebut intentionally killed Ms. Ohler and that her death was not an accident. As such, the evidence that Mr. Colebut allegedly assaulted Ms. Ohler one month before her death is highly relevant and admissible in order to establish that Ms. Ohler's death was not accidental.

This Court will, of course, give the jury a limiting instruction detailing the permissible and impermissible uses of any Rule 404(b) evidence admitted.

2. Rule 403 Admissibility

"'Rule 403 may be invoked to exclude evidence that is prejudicial to defendant to the extent that the negative effect outweighs its probative value. Such evidence is rendered inadmissible if it is prejudicial and irrelevant." *Grayhurst*, 852 A.2d at 505 (quoting *Grundy*, 582 A.2d at 1172). However, "'[t]he mere fact that such evidence is prejudicial to a defendant does not render it inadmissible.'" *Brown*, 900 A.2d at 1164 (quoting *Parkhurst*, 706 A.2d at 424).

As discussed above, the fact that this incident occurred exactly one month before Ms. Ohler's death makes it highly relevant, and its probative value is not substantially outweighed by

the danger of unfair prejudice. Mr. Colebut also argues that evidence of the January 17, 2020 incident, which was later dismissed by the prosecution, would confuse the issue for the jury and lead to a trial within a trial. However, "'[t]he defendant is not entitled to a sanitized version of the state's evidence against him [or her] . . . .'" *Peltier*, 116 A.3d at 156 (quoting *State v. Pona*, 66 A.3d 454, 468 (R.I. 2013)). Here, the probative value of this incident, showing the jury a complete story of Mr. Colebut and Ms. Ohler's relationship and that Ms. Ohler's death was not accidental, is not substantially outweighed by the danger that the jury may confuse the ultimate issues at trial. Furthermore, the danger of unfair prejudice and confusion of the issues can be mitigated by a limiting instruction to the jury detailing the permissible and impermissible uses of the evidence. *See id.* ("any prejudice to the defendant was cured by the comprehensive cautionary instruction issued by the trial justice, which was timely, appropriate, and a model of clarity").

3. Hearsay

As previously discussed, "out-of-court statements offered for their truth are inadmissible unless a recognized exemption or exception applies." *Aponte*, 317 A.3d at 750. In this case, the State is seeking to admit Ms. Munzey's statements from the January 17, 2020 911 call reporting that a black or Spanish male was assaulting Ms. Ohler. The caller's statements are hearsay and, therefore, inadmissible unless they fall under a stated exception.

"[A] present sense impression is a statement that is made simultaneously or with only a slight lapse of time from the event about which the statement relates." *Momplaisir*, 815 A.2d at 70. "A declaration about an event made while the declarant was observing the event is a present sense impression." *Id.* "Because the statement is made contemporaneously with the event, there is no time for reflection or deception and no question about the accuracy of the declarant's

memory." *Id.* Importantly, "[t]he statement usually describes or explains the event that the declarant is observing or experiencing." *Id.*

Here, Ms. Munzey was relaying information to the 911 dispatcher that she appeared to witness herself. Mr. Colebut argues that the transcript of the 911 call shows that Ms. Munzey is talking with a third party and actually relaying information to the dispatcher from the third party. As evidence, Mr. Colebut points to Ms. Munzey asking a third party, "Can you see if he's White or Black (Inaudible)? Uh you can't tell." (State's Ex. 22, 911 Transcript, 2); *see* Hr'g Tr. at 10:25-11:1, Feb. 7, 2025. However, immediately after confirming with the third party that neither person in the car can identify Mr. Colebut's race, Ms. Munzey continues narrating Mr. Colebut and Ms. Ohler's interaction: "He's walking away now with her coat. She went inside the Crown Royal Chicken, and they're picking up all kinds of stuff on the street. I don't . . . I can't tell—[.]" (State's Ex. 22, 911 Transcript, 2.) This Court finds that Ms. Munzey was describing events that she witnessed as they were unfolding. The fact that she asked a third party in her vehicle to confirm if they could identify Mr. Colebut's race does not prove that Ms. Munzey was not witnessing the events herself. Further, she testified on February 7, 2025 that she relayed her observations to the 911 dispatcher at the same time as she was observing them. (Hr'g Tr. at 9:5-7, Feb. 7, 2025.) Accordingly, this Court finds that Ms. Munzey's statements to the 911 operator were a present sense impression and are therefore admissible.

4. Officer Lafond's Testimony

The parties stipulate that Officer Lafond would testify in accordance with the police report he filed dated January 17, 2020. Officer Lafond's police report indicates that he was "dispatched to the area of Royal Fried Chicken located at 270 Dexter St[reet] for a" report of a domestic incident. (State's Ex. 22, Jan. 17, 2020 Police Report, 2.) When Officer Lafond arrived on-scene,

he observed a woman, later identified as Ms. Ohler, running toward him screaming "'he's over there, that's him' pointing to where Cruiser 109 was with the male" who was later identified as Mr. Colebut. *Id.* Officer Lafond "immediately noted that [Ms.] Ohler had a large knot on the top of her forehead as if she had been struck in the head." *Id.* Ms. Ohler told Officer Lafond that the couple were arguing when "Victor got extremely angry and punched [Ms. Ohler] in the forehead with a closed fist." *Id.* Ms. Ohler also stated that Mr. Colebut had previously given her his jacket but after he hit her, he "ripped the jacket off her causing her to stumble." *Id.* Officer Lafond documents that Mr. Colebut was arrested for Domestic Simple Assault, Third or Subsequent Offense, and Domestic Disorderly Conduct. *Id.* The State is only seeking to admit Officer Lafond's observations on January 17, 2020 and concedes that Ms. Ohler's statements to Officer Lafond were testimonial and therefore not admissible. *See* Hr'g Tr. 23-24, Feb. 2, 2025.

In this case, the State seeks to introduce Officer Lafond's testimony regarding the January 17, 2020 incident, a prior bad act, as proof of Mr. Colebut's intent, plan, or motive on February 17, 2020 to kill Ms. Ohler and that her death was not accidental. However, Mr. Colebut argues that this evidence is actually being offered as impermissible propensity evidence. "Rule 404(b) evidence may be admissible as proof of intent or absence of mistake or accident, in which case 'admitting the evidence allows a trier of fact to hear a complete and, it is to be hoped, coherent story so as to make an accurate determination of guilt or innocence.'" *Brown,* 900 A.2d at 1161 (quoting *Parkhurst,* 706 A.2d at 424). Officer Lafond's testimony regarding his observations on January 17, 2020 does help to provide a more complete picture of Mr. Colebut and Ms. Ohler's relationship, especially due to the proximity of this assault to Ms. Ohler's death. This incident provides evidence of Mr. Colebut's intent, plan, or motive on the night Ms. Ohler died.

As this incident occurred exactly one month before Ms. Ohler's death, it is highly relevant and its probative value is not substantially outweighed by the danger of unfair prejudice. Mr. Colebut further contends that the charges resulting from the January 17, 2020 incident were later dismissed by the prosecution, which could create confusion in the minds of the jury and lead to a trial within a trial. However, "'[t]he defendant is not entitled to a sanitized version of the state's evidence against him [or her] . . . .'" *Peltier*, 116 A.3d at 156 (quoting *Pona*, 66 A.3d at 468). In this case, the probative value of this incident, helping to give the jury a complete story of Mr. Colebut and Ms. Ohler's relationship and that Ms. Ohler's death was not accidental, is not substantially outweighed by the danger that the jury may confuse the ultimate issues at trial. Furthermore, the danger of unfair prejudice and confusion of the issues can be mitigated by a limiting instruction to the jury detailing the permissible and impermissible uses of the evidence. *See id.* ("any prejudice to the defendant was cured by the comprehensive cautionary instruction issued by the trial justice, which was timely, appropriate, and a model of clarity").

C. Incident Three to Four Weeks Before Ms. Ohler's Death on February 16, 2020

The State seeks to introduce testimony from Mr. Colebut's neighbors, Ms. Prevost and Ms. Walton, about an incident they observed three to four weeks before Ms. Ohler's death on February 16, 2020. (State's Mot. in Lim. 2.) Mr. Colebut argues that his neighbors' observations are being offered for impermissible propensity purposes.

1. Stacey Prevost's Observations

Ms. Prevost is a neighbor of Mr. Colebut and had lived in the building for the two years prior to Ms. Ohler's death. In Ms. Prevost's grand jury testimony, she describes an incident that occurred a "couple weeks maybe, a month" before Ms. Ohler's death. (State's Ex. 22, Stacey Prevost's Grand Jury Testimony at 45:22.) Ms. Prevost states that she heard Ms. Ohler screaming

for help and ran up to the third-floor apartment to assist. *See id.* at 45. Ms. Prevost observed Ms. Ohler attempting to open the door to leave the apartment while Mr. Colebut prevented her from leaving. *Id.* at 46:14-18. Ms. Prevost further described how Mr. Colebut seemed angry at her for interfering and repeatedly told her to leave them alone. *Id.* at 47:8. This incident is relevant to contextualize Mr. Colebut and Ms. Ohler's relationship. Further, the evidence is relevant for the State to show that Ms. Ohler's death was not accidental, and that Mr. Colebut intentionally caused Ms. Ohler's death. Accordingly, Ms. Prevost's testimony about the incident she observed about three to four weeks before Ms. Ohler's death on February 16, 2020 is admissible.

2. Erica Walton's Observations

Ms. Walton lived at 63 Fountain Street with Ms. Prevost for six months, a neighbor of Mr. Colebut during this time. In Ms. Walton's grand jury testimony, she discusses the incident where Ms. Prevost and Ms. Walton heard yelling from the third-floor apartment and observed Mr. Colebut preventing Ms. Ohler from leaving the apartment. *See* State's Ex. 22, Erica Walton's Grand Jury Testimony at 60:15-61:1. Ms. Walton states that this incident occurred about three weeks before Ms. Ohler's death on February 16, 2020. *Id.* at 61:1. This incident is relevant to contextualize Mr. Colebut and Ms. Ohler's relationship. Further, the evidence is relevant for the State to show that Ms. Ohler's death was not accidental and to show Mr. Colebut's intent with regard to Ms. Ohler's death. Accordingly, Ms. Walton's testimony about the incident she observed about three weeks before Ms. Ohler's death on February 16, 2020 is admissible.

D. General Observations by Neighbors in the Months before Ms. Ohler's Death

The State seeks to introduce evidence that in the months before Ms. Ohler's death, the neighbors living in "63/65 Fountain Street . . . . heard nearly constant fighting, banging, and arguing coming from the third-floor apartment." (State's Mot. in Lim. 2.) The State also seeks to

introduce evidence that the police allegedly responded to the residence numerous times, that on more than one occasion Ms. Ohler "screamed for help or ran from the apartment and the neighbors tried to intervene, only to be thwarted or threatened by [Mr. Colebut,]" and that Mr. Colebut repeatedly threatened or intimidated neighbors by calling them "'cop callers' or 'snitches.'" *Id.* at 3. The State provided transcripts of neighbor Ms. Prevost's grand jury testimony and police interview, neighbor Ms. Walton's grand jury testimony and police interview, neighbor Christian Brady's (Christian[1]) grand jury testimony, and neighbor Shana Brady's (Shana[1]) grand jury testimony. *See* State's Ex. 22. Mr. Colebut argues these observations are vague and are being offered for propensity purposes.

1. Stacey Prevost's Observations

In Ms. Prevost's police interview she describes a time when she allegedly heard Ms. Ohler yelling for help. She does not provide any date for this alleged incident. In Ms. Prevost's grand jury testimony, she described numerous undated incidents when she allegedly heard Mr. Colebut and Ms. Ohler fighting in the stairwell of the apartment. Ms. Prevost further describes how in the months leading up to Ms. Ohler's death she heard fighting almost every night. Ms. Prevost also admitted to calling the police multiple times to address the fighting that she heard.

Ms. Prevost's grand jury testimony and police interview document several instances where Mr. Colebut and Ms. Ohler were allegedly arguing. Ms. Prevost did not identify when these incidents occurred. Mr. Colebut argues that this testimony is being used as propensity evidence, its probative value is substantially outweighed by the danger of unfair prejudice, and it is cumulative. Ms. Prevost's testimony that she could often hear Mr. Colebut and Ms. Ohler arguing

[1] Since Christian Brady and Shana Brady have the same last name, their first names will be used to avoid confusion. No disrespect is intended.

in Mr. Colebut's third-floor apartment on unspecified dates about unspecified issues are vague and too generalized to be relevant to the ultimate issue in this case, whether Mr. Colebut is responsible for Ms. Ohler's death. Further, in these instances when Ms. Prevost heard raised voices coming from Mr. Colebut's third-floor apartment, she did not see Ms. Ohler. While it appears Ms. Ohler frequently visited Mr. Colebut's apartment, it appears her primary residence was an apartment in North Providence. Thus, any evidence of raised voices coming from the third-floor apartment on unspecified dates does not necessarily show that Mr. Colebut and Ms. Ohler were arguing, and thus, any probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

Accordingly, Ms. Prevost's testimony that she heard arguing from the third-floor apartment or in the stairwell is not admissible because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

2. Erica Walton's Observations

In Ms. Walton's police interview, she details several incidents where she believed she heard Ms. Ohler screaming for help and allegedly heard arguments between Ms. Ohler and Mr. Colebut. *See* State's Ex. 22, Erica Walton's Police Interview. She does not identify when these incidents occurred, how she knew the voice belonged to Ms. Ohler, or whether she observed Ms. Ohler during these arguments. Mr. Colebut argues that this testimony is being used as propensity evidence, its probative value is substantially outweighed by the danger of unfair prejudice, and it is cumulative. Ms. Walton's testimony that she often heard arguments between Mr. Colebut and Ms. Ohler on unspecified dates about unspecified issues are vague and too generalized to be relevant to the ultimate issue in this case, whether Mr. Colebut is responsible for Ms. Ohler's death. While Ms. Ohler allegedly stayed at Mr. Colebut's apartment frequently, it appears that her

primary residence was an apartment in North Providence. Thus, any evidence of raised voices coming from the third-floor apartment on unspecified dates does not necessarily show that Mr. Colebut and Ms. Ohler were arguing, and thus, any probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

Accordingly, Ms. Walton's testimony that she heard arguing from the third-floor apartment is not admissible because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

3. Christian Brady's Observations

At the time of Ms. Ohler's death, Christian Brady was living on the second floor of 65 Fountain Street with his mother, Shana. Christian had moved into the apartment in November 2019. In his grand jury testimony, Christian testified that during the three months he lived there before Ms. Ohler's death, he heard constant arguing coming from the third-floor apartment where Mr. Colebut lived. Christian testified that he saw "some big white lady" living in the third-floor apartment with Mr. Colebut and that he heard someone in the third-floor apartment calling Mr. Colebut "the N word." (State's Ex. 22, Christian Brady Grand Jury Testimony 31.) Christian testified that it was often difficult to understand what they were saying but that he heard almost constant yelling from the third-floor apartment.

Christian's testimony does not describe the subject of the arguments, and, in fact, he testifies that he had difficulty understanding what was being said. Accordingly, Christian's testimony is not admissible because any potential probative value is substantially outweighed by the danger of unfair prejudice.

4. Shana Brady's Observations

Shana moved into the second floor of 65 Fountain Street in July 2019. In Shana's grand jury testimony, she testified that Mr. Colebut harassed her by asking her questions allegedly about Ms. Ohler and by trying to pull Shana's pants down. Shana testified that Mr. Colebut tried repeatedly to get into her apartment and talk with her because he believed she had called the police on him. She testified that she called the police on the third-floor neighbors about five times because she could hear "banging, yelling, screaming, and . . . chasing, running around in circles." (State's Ex. 22, Shana Brady Grand Jury Testimony 20-21.)

Shana's testimony that she heard Mr. Colebut and Ms. Ohler yelling on unspecified dates about unspecified issues are vague and too generalized. Any probative value from Shana's testimony that she heard yelling coming from the upstairs apartment is substantially outweighed by the danger of unfair prejudice.

Shana's testimony that Mr. Colebut allegedly harassed her and attempted to pull her pants down is irrelevant, and the probative value of her proffered testimony is far outweighed by the danger of unfair prejudice.

E. Mr. Colebut's Statements

Mr. Colebut seeks to exclude portions of his statement to police after his arrest that describe previous domestic violence incidents between himself and Ms. Ohler on the basis that this evidence would be offered as impermissible character evidence or propensity evidence in violation of Rule 404(b) and would be overly prejudicial in violation of Rule 403. (Def.'s Mot. in Lim. 1.) The State argues that Mr. Colebut's statements are admissible as (1) nonhearsay, because they are statements by a party opponent under Rule 801(d)(2); (2) relevant evidence; and (3) permissible 404(b)

evidence to prove Mr. Colebut's alleged intent, motive, or plan to kill Ms. Ohler and to show that Ms. Ohler's death was not accidental. (State's Obj. to Def.'s Mot. in Lim. 1-2.)

1. Statements by a Party Opponent

The State asserts that Mr. Colebut's statements are admissible as nonhearsay statements by a party opponent. *Id.* at 1. Mr. Colebut does not allege that his statements are hearsay. *See* Def.'s Mot. in Lim. Rule 801 states, in pertinent part, that a statement is nonhearsay if "[t]he statement is offered against a party and is (A) the party's own statement . . . ." R.I. R. Evid. 801(d)(2)(A). Here, the State intends to offer Mr. Colebut's statements made during his police interview against him. Accordingly, these statements are nonhearsay, and, as such, are admissible.

2. Rule 404(b) Admissibility

Mr. Colebut argues that these statements should be excluded because they will be offered as impermissible character evidence. Put another way, Mr. Colebut argues that the State intends to offer this evidence to show that Mr. Colebut was allegedly violent with Ms. Ohler in the past and as evidence that Mr. Colebut was violent with Ms. Ohler on the night of her death. However, the State argues that this evidence is being introduced for a permissible reason, to show Mr. Colebut's intent, motive, or plan, and to show that Ms. Ohler's death was not accidental.

As previously discussed, evidence of a defendant's prior bad acts cannot be used to prove a defendant's character. R.I. R. Evid. 404(b). However, evidence of prior bad acts may be admissible if it is offered to prove "intent . . . absence of mistake or accident. . . ." *Id.* Further, evidence of a prior bad act is "also admissible when prior acts 'are interwoven or in instances when introduction is necessary for a trier of fact to hear a complete and, it is to be hoped, coherent story so as to make an accurate determination of guilt or innocence.'" *State v. Rodriguez*, 996 A.2d 145, 150-51 (R.I. 2010) (quoting *State v. Pona*, 948 A.2d 941, 950 (R.I. 2008)).

Mr. Colebut's statements to police after his arrest paint a historical picture of a tumultuous relationship between Mr. Colebut and Ms. Ohler. This evidence would provide to the jury a coherent story about the couple's relationship in order to assist the jury in determining whether Mr. Colebut is responsible for Ms. Ohler's death. Further, Mr. Colebut's statements, voluntarily given to police after his arrest, speak to Mr. Colebut's alleged intent, motive, or plan on the night of Ms. Ohler's death and are necessary to show that Ms. Ohler's death was not accidental. Accordingly, Mr. Colebut's statements are admissible to prove Mr. Colebut's alleged intent, motive, or plan and as evidence that Ms. Ohler's death was not accidental.

3. Rule 403 Admissibility

Mr. Colebut also argues that the statements should be precluded because they are overly prejudicial. (Def.'s Mot. in Lim. 1.) The State argues that the statements are highly relevant, and thus, the probative value of the evidence outweighs any prejudice to Mr. Colebut. *See* State's Obj. to Def.'s Mot. in Lim.

"'Rule 403 may be invoked to exclude evidence that is prejudicial to defendant to the extent that the negative effect outweighs its probative value. Such evidence is rendered inadmissible if it is prejudicial and irrelevant.'" *Grayhurst*, 852 A.2d at 505 (quoting *Grundy*, 582 A.2d at 1172). However, "'[t]he mere fact that such evidence is prejudicial to a defendant does not render it inadmissible.'" *Brown*, 900 A.2d at 1164 (quoting *Parkhurst*, 706 A.2d at 424).

The statements at issue in this motion include statements detailing times that Mr. Colebut had hit and choked Ms. Ohler and times that Ms. Ohler had hit Mr. Colebut and called him racial slurs. *See* Def.'s Mot. in Lim., Ex. A. The State is alleging that Mr. Colebut strangled Ms. Ohler on the night of February 16, 2020 resulting in her death. Mr. Colebut's statements to police after his arrest detailing his tumultuous relationship with Ms. Ohler are admissible as evidence of Mr.

Colebut's intent, motive, or plan on the night of her death and as evidence that Ms. Ohler's death was not accidental. These statements are highly relevant, and the probative value of this evidence is not substantially outweighed by the danger of unfair prejudice.

The Court will, of course, give the jury a limiting instruction detailing the permissible and impermissible uses of any Rule 404(b) evidence admitted.

V

Conclusion

For the foregoing reasons, the State's 404(b) motion is **GRANTED in part** and **DENIED in part**. The State will be permitted to introduce testimony and evidence as to the August 18, 2019 incident, which includes testimony from Stacey Prevost and Erica Walton. The State will also be permitted to introduce testimony and evidence with regard to the January 17, 2020 incident, including testimony from Dawn Munzey and Officer Jason Lafond. The State will also be permitted to introduce testimony from Stacey Prevost and Erica Walton describing how Mr. Colebut allegedly prevented Ms. Ohler from leaving Mr. Colebut's apartment three or four weeks before Ms. Ohler's death. However, the State will not be permitted to allow Officer Jason Lafond to testify as to Ms. Ohler's statements on January 17, 2020 and will not be permitted to allow Stacey Prevost, Erica Walton, Christian Brady, or Shana Brady to testify about unspecified and vague arguments between Mr. Colebut and Ms. Ohler.

For the aforementioned reasons, Mr. Colebut's motion *in limine* to preclude portions of his statement to police after his arrest is **DENIED**.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Victor Colebut**
CASE NO:	**P1-2020-1991ADV**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 12, 2025**
JUSTICE/MAGISTRATE:	**Montalbano, J.**
ATTORNEYS:	
For Plaintiff:	**Jonathan E. Burke, Esq.** **Shannon Signore, Esq.**
For Defendant:	**Elizabeth Payette, Esq.**