

**APPLICATION FOR
DISTRICT COURT JUDGESHIP**

A. PERSONAL INFORMATION

1. Full name.
Molly Owen
2. Birthdate.
[REDACTED]
3. Current home address.
[REDACTED]
4. Email address.
[REDACTED]
5. Preferred phone number.
[REDACTED]
6. Judicial position you are applying for.
District Court Judge, Twentieth Judicial District
7. Date you became a U.S. citizen, if different than birthdate.
N/A
8. Date you become a Montana resident.
February 25, 2015

B. EDUCATIONAL BACKGROUND

9. List the names and location (city, state) of schools attended beginning with high school, and the date and type of degree you received.
Sunnyslope High School (Phoenix, AZ), high school degree awarded May 2005
University of Arizona (Tucson, AZ), Bachelor of Arts degree awarded May 2009
Sandra Day O'Connor College of Law, Arizona State University (Tempe, AZ), Juris Doctorate degree awarded May 2012
10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.
Sandra Day O'Connor College of Law, Arizona State University:
 - Graduated Magna Cum Laude
 - Order of the Coif

- *William H. Pedrick* Scholar
 - CALI Excellence for the Future Award (awarded to the recipient of the highest grade in a law school class) – Legal Method and Writing; Sports Law; Land Use Planning; Construction Law
 - *Arizona State Law Journal*, Managing Editor
- University of Arizona:
- Graduated Magna Cum Laude
 - President's Award for Excellence – Full Tuition Waiver for Academic Merit
 - Dean's List with Distinction (4.0 GPA with 15 or more credits) – Four Semesters
 - Phi Beta Kappa Academic Honor Society
 - Member of Sigma Kappa Sorority

C. LEGAL AND PROFESSIONAL EXPERIENCE

11. In chronological order (beginning with most recent), state each position you have held since your graduation from law school. Include the dates, names and addresses of law firms, businesses, or governmental agencies with which you have been affiliated, and your position. Include the dates of any periods of self-employment and the name and address of your office.

Town Attorney, Town of St. Ignatius (12 1st Avenue, St. Ignatius, MT 59865). August 2017 to present.

Deputy County Attorney, Lake County Attorney's Office (106 4th Avenue East, Polson, MT 59860). March 2015 to present.

Assistant City Prosecutor, City of Mesa Prosecutor's Office (250 East 1st Avenue #222, Mesa, AZ 85210). August 2013 to March 2015.

Judicial Law Clerk, Arizona Court of Appeals Division One (1501 West Washington Street #203, Phoenix, AZ 85007). August 2012 to August 2013.

12. In chronological order (beginning with most recent), list your admissions to state and federal courts, state bar associations, and administrative bodies having special admission requirements and the date of admission. If any of your admissions have terminated, indicate the date and reason for termination.
Admitted to the State Bar of Montana: August 8, 2014
Admitted to the State Bar of Arizona: January 18, 2013

13. Describe your typical legal areas of concentration during the past ten years and the approximate percentage each constitutes of your total practice (i.e., real estate, water rights, civil litigation, criminal litigation, family law, trusts and estates, contract drafting, corporate law, employment law, alternative dispute resolution, etc).
Criminal litigation (90 percent)
Municipal law (8 percent)
Civil litigation (2 percent)

14. Describe any unique aspects of your law practice, such as teaching, lobbying, serving as a mediator or arbitrator, etc. (exclude bar activities or public office).
Since October, 2018, a grant from the Violence Against Women Act has funded my position as a Deputy County Attorney. One of the requirements of the grant requires coordinating of training opportunities for community members. My paralegal and I have arranged multiple trainings for law enforcement, members of the local bar association, and the judiciary. We have had nationally known speakers come to Polson to educate community members on—among other issues—stalking, the importance of orders of protection, and investigating a domestic violence case through the lens of knowing that the victim will not engage in the prosecution.
15. Describe the extent that your legal practice during the past ten years has included participation and appearances in state and federal court proceedings, administrative proceedings, and arbitration proceedings.
Because I have been a prosecutor for all but one year of my career, the vast majority of my practice has included participation and appearance in state court proceedings. I spend most of the morning on Wednesdays and Thursdays in the courtroom. I have also been the lead (or sole) prosecutor for over two dozen misdemeanor and felony jury trials. I have been the lead (or sole) prosecutor for hundreds of misdemeanor bench trials.
16. If you have appeared before the Montana Supreme Court within the last ten years (including submission of amicus briefs), state the citation for a reported case and the case number and caption for any unreported cases.
Although I have not appeared before the Montana Supreme Court, I have appeared before the Arizona Supreme Court after submitting an amicus brief in *State v. Harris*, 234 Ariz. 343, 322 P.3d 160 (2014).
17. Describe three of the most important, challenging, or complex legal issues you have dealt with or legal proceedings in which you have participated during your practice.
To begin with, I prosecuted a defendant for Sexual Intercourse Without Consent. Both he and the victim were under the influence of various substances. After the sexual intercourse was over, the victim immediately went to the hospital to receive a Sexual Assault Nurse Examination. At trial, the Defendant argued that the intercourse was consensual. Ultimately, the jury found the Defendant not guilty. I believed that the victim was truthful, so it was at first difficult for me to accept the jury's finding. However, the jury took their job seriously, and it reminded me that it is more important to take difficult cases to trial than to merely dismiss them or seek a mitigated sentence. The trial undoubtedly educated the jurors on how the criminal justice system operates, and it showed the victim that the State took her allegations seriously.

Next, I prosecuted a defendant who was charged with two counts of Strangulation of a Partner or Family Member. The Defendant was found guilty of one count and not guilty of the other count. During the trial, I played excerpts from calls that the Defendant made while he was in the Lake County Jail. These calls were relevant to show the Defendant's consciousness of guilt. This was especially necessary because the trial was again a difficult one. There were no physical marks from the assaults, and the victim did not immediately report them.

Finally, my work holding violent offenders accountable for their actions has been important to me. In my time prosecuting domestic violence offenders, I have changed the culture in Lake County regarding Montana Rule of Evidence 404(b). Before, defense attorneys often expected that prosecutors would not seek to introduce a defendant's prior incidents of domestic violence. However, my practice to seek out this information and present it in court when available has educated the judiciary and fellow attorneys that this type of evidence is important for a jury to hear. This has been important to the community because I have been able to obtain convictions—and lengthy prison sentences—for violent domestic violence offenders despite victims' refusal to engage in the prosecution. Moreover, my paralegal and I have listened to thousands of hours of jail phone calls. Again, this has resulted in lengthy prison sentences for offenders whose victims have refused—for good reason, such as fear of further financial, physical, or emotional abuse—to engage in prosecutions. Next, I have stayed up-to-date on emerging science surrounding victim and offender behavior and have been trained on trauma-informed interview techniques. This has allowed me to build better relationships with domestic violence victims to ensure that they *do* engage in the prosecution. Taken together, these strategies have been important to show my community that actions have concrete consequences.

18. If you have authored and published any legal books or articles, provide the name of the article or book, and a citation or publication information.
 “A New Frontier in Aviation Law: Utilizing Business Torts as an Additional Cause of Action,” *The Arizona State Law Journal* (Spring 2012).
19. If you have taught on legal issues at postsecondary educational institutions or continuing legal education seminars during the past ten years, provide the title of the presentation, date, and group to which you spoke.
 Although I have educated numerous police officers, members of our community, and high school students, I have not yet had the chance to teach at a postsecondary educational institution or for a continuing legal education seminar.
20. Describe your pro bono services and the number of pro bono hours of service you have reported to the Montana Bar Association for each of the past five years.
 Although I have not engaged in pro bono service, I was the President of the Twentieth Judicial District Bar Association for two years where I coordinated speakers to conduct free trainings to Bar Association members. I also arranged after-work events for members to socialize and foster the spirit of collegiality within the Twentieth Judicial District.
21. Describe dates and titles of any offices, committee membership, or other positions of responsibility you have had in the Montana State Bar, other state bars, or other legal professional societies of which you have been a member and the dates of your involvement. These activities are limited to matters related to the legal profession.
 I was the President of the Twentieth Judicial District Bar Association from June 2015 to June 2017. As the President, I collected members' dues and administered the Bar Association's checking account. I also coordinated speakers to conduct free continuing legal education trainings.
22. Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, and type of discharge received.

Not applicable.

23. If you have had prior judicial or quasi-judicial experience, describe the position, dates, and approximate number and nature of cases you have handled.

As a judicial law clerk at the Arizona Court of Appeals for Judge Maurice Portley, I drafted decisions on criminal and civil matters, including prosecutorial immunity, personal jurisdiction, contract and statutory interpretation, applicability of a state administrative agency's procedural rule to an individual's claim for benefits, insurance bad-faith claims, jury instructions, and attorneys' fees. I then presented the issues of the particular cases I handled to a panel of three Court of Appeals' judges. Thereafter, I edited the drafts according to recommendations made by the panel of judges or after oral arguments. Although most drafts became non-binding memorandum decisions, I—along with edits made by three Court of Appeals' judges—authored the following opinions, which are still law today: *Cooke v. Ariz. Dep't of Econ. Sec.*, 232 Ariz. 141, 302 P.3d 666 (Ariz. Ct. App. 2013); *Bradshaw v. Jasso-Barajas*, 231 Ariz. 197, 291 P.3d 991 (Ariz. Ct. App. 2013).

Additionally, while in law school, I worked as a Judicial Extern for Judge G. Murray Snow of the United States District Court for the District of Arizona. In that role, I assisted with drafting orders on motions to remand and motions to dismiss for a wide variety of issues, including Eleventh Amendment immunity and alleged constitutional violations of prisoners' rights.

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge.

Not applicable.

D. COMMUNITY AND PUBLIC SERVICE

25. List any civic, charitable, or professional organizations, other than bar associations and legal professional societies, of which you have been a member, officer, or director during the last ten years. State the title and date of any office that you have held in each organization and briefly describe your activities in the organization and include any honors, awards or recognition you have received.

I have been a member of Leadership Flathead Reservation since September 2019. I am part of the 2019 – 2020 membership class where I have been able to interact with other local leaders as we have learned leadership skills and toured various places and businesses on the Flathead Reservation. Currently, I am helping to plan tours and enlist presenters for sessions that the 2021 – 2022 membership class will be attending.

26. List chronologically (beginning with the most recent) any public offices you have held, including the terms of service and whether such positions were elected or appointed. Also state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I was a Board Member and Vice Chair of the Polson Redevelopment Agency from January 2019 to December 2021. This was an appointed position.

E. PROFESSIONAL CONDUCT AND ETHICS

27. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.
No.
28. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.
No.
29. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.
Yes. I was convicted of Minor in Possession in 2006 for consuming alcohol while under the age of twenty-one.
30. Have you ever been found liable in any civil proceedings for damages or other legal or equitable relief, other than marriage dissolution proceedings? If so, provide the citation of a reported case or court and case number for any unreported case and the year the proceeding was initiated (if not included in the case number).
No.
31. Is there any circumstance or event in your personal or professional life that, if brought to the attention of the Governor or Montana Supreme Court, would affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.
No.

F. BUSINESS AND FINANCIAL INFORMATION

32. Are you currently an owner, officer, director, or otherwise engaged in the management of any business other than a law practice? If so, please provide the name and locations of the business and the nature of your affiliation, and state whether you intend to continue the affiliation if you are appointed as a judge.
No.
33. Have you timely filed appropriate tax returns and paid taxes reported thereon as required by federal, state, local and other government authorities? If not, please explain.
Yes.
34. Have you, your spouse, or any corporation or business entity of which you owned more than 25% ever filed under title 11 of the U.S. Bankruptcy Code? If so, give details.
No.

G. JUDICIAL PHILOSOPHY

35. State the reasons why you are seeking office as a district court judge.

First, I am seeking office as a district court judge to serve my community. During my ten year career as an attorney, I have worked entirely in public service, and I want to continue that important work. Second, I am seeking office to ensure that everyone—including victims of crime—are treated equitably and with respect if they face the daunting task of entering a courtroom. I have witnessed firsthand that crime victims are oftentimes forgotten during the criminal justice process. They frequently feel that their time engaging with the criminal justice system has left them more powerless than they felt beforehand. The same holds true for *pro se* litigants. I would aim to make my courtroom a less daunting arena for all but especially for crime victims and *pro se* litigants.

36.a What three qualities do you believe to be most important in a good district court judge?^a

First, I believe the best district court judges possess humility. They are willing to be educated on issues by parties rather than decide quickly based on their past experiences. They are committed to a lifelong learning by educating themselves on updates to the law and in science.^a

Second, good district court judges are professional. They treat all parties before them fairly and without regard for any personal feelings they may have towards a party. They do their job with an appreciation of ethical rules and effectively manage potential conflicts. They manage their time and their docket efficiently to ensure each case is heard and that thorough decisions are made in a timely manner.^a

Finally, the best district court judges are brave. They have the courage to make unpopular decisions to ensure that the law is followed. They do so by having the ability to research the law, apply the law to the facts of the case, and then persuasively communicate their decision either orally or in writing.^a

37.a What is your philosophy regarding the interpretation and application of statutes and the Constitution?^a
My philosophy is that the text of the Constitution and statutes should always drive a judge's interpretation and application of law because judges should not legislate from the bench.^a

H. MISCELLANEOUS

38.a Attach a writing sample authored entirely by you, not to exceed 20 pages. Acceptable samples include briefs, legal memoranda, legal opinions, and journal articles addressing legal topics.^a

39.a Please provide the names and contact information for three attorneys and/or judges (or a combination thereof) who are in a position to comment upon your abilities.^a

Justin Kalmbach, (406) 883-1159^a

Judge James Manley, (406) 883-7250^a

Judge Deborah Kim Christopher, (406) 883-7360^a

CERTIFICATE OF APPLICANT

I hereby state that to the best of my knowledge the answers to all questions contained in my application are true. By submitting this application I am consenting to investigation and verification of any information listed in my application and I authorize a state bar association or any of its committees, any professional disciplinary office or committee, educational institutions I have attended, any references furnished by me, employers, business and professional associates, law enforcement agencies, all governmental agencies and instrumentalities and all other public or private agencies or persons maintaining records pertaining to my citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the U. S. Armed Forces, or disciplinary history to release to the Office of the Governor of Montana or its agent(s) any information, files, records, or reports requested in connection with any consideration of me as a possible nominee for appointment to judicial office.

I further understand that the submission of this application expresses my willingness to accept appointment as District Court Judge if tendered by the Governor, and my willingness to abide by the Montana Code of Judicial Conduct and other applicable Montana laws (including the financial disclosure requirements of MCA § 2-2-106).

4/4/22

(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Monday, April 11, 2022

Mail the signed original to:

Hannah Slusser
Governor's Office
P.O. Box 200801
Helena, MT 59620-0801

Send the electronic copy to: hannah.slusser@mt.gov

WRITING SAMPLE

Molly Owen
118 Orchard Park Lane
Polson, MT 59860

The attached writing sample is a response to a motion in limine prepared and edited entirely by me as part of my position as a Deputy County Attorney. The facts underlying the procedural history that prompted the Defendant's motion in limine are omitted. To summarize, the State charged the Defendant with Strangulation of a Partner or Family Member and Aggravated Assault (Reasonable Apprehension). The State extensively researched all previous incidents of domestic violence between the Defendant and his victim, D.R., and obtained police reports and video from those previous incidents. These were then sent to the Defendant as part of the discovery of the case. The Defendant argued that the State should not be able to discuss these previous incidents of domestic violence at trial. The Court conducted a hearing on the motion and orally indicated that it would likely deny the Defendant's motion. Because of this, the Defendant pled guilty to avoid a trial and is currently incarcerated at the Montana State Prison.

1 Lake County Attorney's Office
Lake County Courthouse
2 106 Fourth Avenue East
Polson, MT 59860
3 406-883-7245

4 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

5 THE STATE OF MONTANA,

Cause No. DC-21-22

6 Plaintiff,

STATE'S RESPONSE TO DEFENDANT'S
MOTION AND BRIEF IN LIMINE TO
EXCLUDE PRIOR ACTS FROM TRIAL

7 vs.

8 DEVIN A. PEASLEY,

Defendant.

9
10 Comes now, MOLLY OWEN, Deputy Lake County Attorney, and files this Response to the
11 Defendant's Motion in Limine to Exclude Prior Acts from Trial. For the following reasons, the State requests
12 that the Court deny the Defendant's motion.

13 STATEMENT OF FACTS

14 *A. April 7, 2019 Incident*

15 On or about April 7, 2019, in Missoula County, Montana, Wendy Adams called 911 to report that the
16 Defendant was waving a pistol around. Ms. Adams was present with her daughter, Kristyn Adams, as well as
17 D.R. Ms. Adams said that D.R. did not want to talk to law enforcement. By the time law enforcement arrived,
18 D.R. and the Defendant were gone. Officers spoke to Ms. Adams who said that she was home with Kristyn and
19 D.R. when the Defendant pulled up in his car. The Defendant threw D.R.'s clothes out of the car and wrestled
20 with D.R. The three women went inside the house, but the Defendant then pulled out a gun and pointed it at a
bedroom window. Ms. Adams went outside to confront the Defendant who told her, "I will shoot you; you
fucking bitch." Ms. Adams knocked the gun away and punched the Defendant. Ms. Adams left the front door
open, so the Defendant ran and "went after his girlfriend," D.R., while pointing his gun. Ms. Adams said that the

1 Defendant tackled D.R. just inside the front door. D.R. was pregnant at the time. The Defendant then got up and
2 fled. Next, Ms. Adams took D.R. and dropped her off in St. Ignatius. Ms. Adams believed that the Defendant
3 may have gone to his mother's house. Ms. Adams said that her daughter, Kristyn, had recently received
4 threatening Facebook messages from the Defendant. The Defendant told Kristyn that "he wasn't done with them
yet."

5 Officers attempted to speak with D.R., but she refused. However, an officer was later able to speak to
6 the Defendant who said that he and D.R. were having a "typical argument," but Ms. Adams "blew things out of
7 proportion." The Defendant denied having a gun but admitted to throwing D.R.'s clothes out of the car. While
8 the officer was on the phone with the Defendant, the Defendant told the officer that he was with D.R. and she
9 would also tell him that things were blown out of proportion. Consequently, D.R. got on the phone and said the
incident was blown out of proportion. D.R. denied that the argument became physical.

10 Next, officers spoke to Kristyn Adams. She said that she and Wendy picked D.R. up at the Defendant's
11 parents' house because the Defendant had beaten D.R. up. When the trio got to Wendy's house, the Defendant
12 arrived right after them. Kristyn said the Defendant was yelling, "get out here, you stupid bitch." The Defendant
13 wanted D.R. to come out of the house. D.R. and Kristyn were in Kristyn's bedroom. Kristyn said that the
Defendant came to her bedroom window and pointed a gun through the window. Kristyn said Wendy then went
out to the front porch, and the Defendant came into house and went after D.R.

14 As a result, the Defendant was charged with Assault with a Weapon in the Fourth Judicial District
15 Court. The Defendant pled guilty to Criminal Endangerment in December, 2020.

16 *B. May 18, 2019 Incident*

17 On May 18, 2019, Peyton Peasely, the Defendant's sister, called 911 to report that the Defendant had
18 beaten, strangled, and was dragging his girlfriend, D.R., into the woods against her will. D.R. was pregnant.
19 Officers arrived to the scene and spoke to Nickie Trahan, the Defendant's mother. Ms. Trahan said that D.R. is
an alcoholic and gets seizures from alcohol withdrawal. Ms. Trahan said that D.R. went with the Defendant
willingly.

20 Immediately, Peyton interrupted her mother and said that D.R. did not go with the Defendant willingly.

1 Peyton said that the Defendant was "dragging her with him the whole time." Peyton said that the Defendant was
2 not drinking alcohol but does use methamphetamine. Peyton said the incident happened when D.R. said that she
3 wanted to go to her grandpa's house. This caused the Defendant to become agitated and angry. Peyton went
4 outside and waited in the car for D.R. Then, D.R. and the Defendant came outside. D.R. sat in the car, and the
5 Defendant began pounding on the back window where D.R. was sitting. Peyton got out of the car. The
6 Defendant demanded that D.R. unlock the door. The Defendant took a tire/car jack and hit the car to try to
7 persuade D.R. to exit the car. This dented the car. The Defendant yelled at Peyton that D.R. is not going
8 anywhere. Peyton told D.R. to get out of the car because she should "figure this shit out" with the Defendant.
9 The Defendant then got into the car and tried to pull D.R. out of the car. D.R. would not get out. The Defendant
10 started hitting D.R. in the face multiple times. The Defendant put his hands on her throat, attempting to strangle
11 D.R. Peyton tried to grab the Defendant to push him off D.R. The Defendant turned around and started trying to
12 hit Peyton. Next, Ms. Trahan arrived home. Peyton told Ms. Trahan that the Defendant was beating D.R. up.
13 Ms. Trahan yelled at the Defendant to "get off of her!" Peyton then jumped into the back of the car and got the
14 Defendant in a chokehold to pull him off of D.R. D.R. got out of the car and walked away. Ms. Trahan told the
15 Defendant that he needed to leave, but the Defendant pushed Ms. Trahan to the ground. The Defendant walked
16 to D.R. and told her "you gotta come with me." He began dragging D.R. Peyton was unsure whether the
17 Defendant was strangling D.R. but said that the Defendant was pulling on D.R. with two hands. Peyton said that
18 the Defendant hit D.R. "quite a few times."

15 Law enforcement officers from almost every agency from Flathead County to Missoula County arrived
16 to look for D.R. After several hours, officers eventually located D.R. She denied that the Defendant hit or drug
17 her. She had a red mark on the side of her neck that she said came from her dog. She said she had no other
18 injuries, but officers saw a red mark on her chest. D.R. said this also came from her dog. D.R. said that she and
19 the Defendant went different ways from the Ms. Trahan's house, but officers knew this was not true because
20 D.R. and the Defendant had messaged friends to tell them that they were together. Missoula County Sheriff's
Officer Troy Rexin thought it was concerning that D.R. walked up to him and automatically told him that she
had not been choked, hit, or taken against her will.

1 Because of D.R.'s non-engagement with law enforcement, it was decided to charge him with Domestic
2 Abuse in Flathead Tribal Court. The Defendant pled guilty as charged.

3 *C. May 10, 2020 Incident*

4 On or about May 10, 2020, in Lake County, Montana, Chelsei Camel called 911 to report that the
5 Defendant had a female, D.R., on the ground and was choking her in the middle of the road. Officers arrived to
6 the location but could not initially find anyone. Lake County Sheriff's Deputy Cherie Schilling spoke to Ms.
7 Camel. Ms. Camel said that she saw a female walking towards the house next door, and a male was following
8 her. She saw the male on top of the female, and the female's legs were kicking. Ms. Camel was unsure if the
9 male was choking the female, but the contact appeared unwanted. Ms. Camel said she has heard the two arguing
10 in the past.

11 Flathead Tribal Police Officer Desmond Joseph entered the home and found D.R. and four children
12 sitting on the bed in a bedroom. D.R. said that the Defendant was not home. Officer Joseph was unable to find
13 the Defendant in the home. D.R. said that she did not see the Defendant leave but thought he would have left on
14 foot. D.R. said that she was not involved and did not know who the Defendant was fighting. She said she was
15 sleeping. Officer Joseph then informed D.R. about the 911 call, and D.R. relented and said that she and the
16 Defendant had been fighting. D.R. said that she was trying to get away from the Defendant, and the Defendant
17 came after her. D.R. said that the Defendant pushed her to the ground. D.R. said that nothing else happened, and
18 the Defendant did not choke her. But, D.R. said that she was kicking her legs to try to get away from the
19 Defendant. Officer Joseph spoke to the four children who collectively said that they were asleep, but that
20 sometimes D.R. and the Defendant fight. D.R. stated that she was pregnant. Officers were unable to locate the
Defendant.

17 The Defendant was charged with Domestic Abuse in Flathead Tribal Court. The Defendant pled guilty
18 as charged.

19 *D. November 20, 2020 Incident*

20 On or about November 20, 2020, in Lake County, Montana, an unknown person called 911 to report
that a male and female were yelling at each other, and the female threw a rock at a vehicle. Lake County

1 Sheriff's Deputy Brandon Gale arrived. By the time Deputy Gale arrived, the Defendant had fled. Deputy Gale
2 spoke to D.R. D.R. had a "clear black eye." D.R. said that the black eye was from November 16th. D.R. said she
3 broke up with the Defendant because of the black eye. D.R. said that she and the Defendant argued over her
4 phone, and the Defendant took it. D.R. threw a rock at the Defendant's windshield, which caused the Defendant
5 to break D.R.'s phone. The Defendant's sister, Annie Peasley, arrived and said she was there to get the
6 Defendant's vehicle and rifle. Ms. Peasley said that the Defendant wanted to press charges against D.R. for
7 breaking his window.

8 Later, D.R. disclosed that her black eye came from the Defendant hitting her with closed fists. D.R.
9 described this as the Defendant "hitting her like a man." She said that her daughter was present during this
10 assault and was crying. She said that she had stars in her eyes and then blacked out. When she regained
11 consciousness, the Defendant was standing on top of her.

12 *E. The Instant Case – January 9, 2021 Incident*

13 On or about January 11, 2021, in Lake County, Montana, D.R. called tribal dispatch to report an assault
14 that occurred on January 9, 2021. Tribal Officer Jesse Drennan responded to D.R.'s location and spoke with her.
15 D.R. said that, on January 9, the Defendant pulled her into their bedroom using D.R.'s hair. He did this in front
16 of their young daughters who were crying. The Defendant was extremely angry and was dripping with sweat.
17 He tied her up using duct tape and a bungee cord around her wrists. While tying up her up, he told her he was
18 thinking about killing her. The Defendant said that their families were big enough to care for their children if
19 D.R. and the Defendant were not around anymore. The Defendant said that he was thinking of taking her for a
20 ride up in the woods, and no one would see her again. The Defendant said that he had been thinking and was not
willing to let D.R. go because D.R. was his freedom. D.R. told the Defendant that if he killed her, he would go
to prison. The Defendant said he was not afraid to go to prison because he would simply go on the run. The
Defendant told D.R. to "shut the fuck up or he was going to kick her head in." D.R. believed that the Defendant
would indeed kill her, so she stopped talking and could hear her two children crying. D.R. later disclosed that,
immediately before being tied up with duct tape, the Defendant choked her with his hands, which caused her to

1 lose consciousness. When D.R. woke up, she had urinated on herself. And, after some time, the Defendant let
2 her out of the bedroom.

3 D.R. said that she did not report the incident for two days because she does not have a phone, the
4 Defendant isolates her from her friends and family, and when her friends and family try to come to her house,
5 the Defendant chases them away. D.R. said that the Defendant gets possessive over their children and becomes
6 concerned that D.R. is bringing men over to her house. D.R. advised that the Defendant believes their youngest
7 child is not biologically his, so D.R. and the Defendant went on the Maury Povich show in November, 2020, to
8 have DNA testing done, which proved that the Defendant was the baby's father. D.R. said that the Defendant is
9 not allowed to live at her residence because he has had issues with Tribal Housing. Thus, Tribal Housing told
10 D.R. that, if the Defendant continues to live with her, D.R. and her children will be evicted once the Covid
11 prohibition on evictions ends. D.R. said that the Defendant uses methamphetamine and "gets all out of it." She
12 said that she drinks alcohol to cope with the Defendant's abuse.

13 Subsequently, while in the Lake County Jail, the Defendant made several phone calls to his family
14 members. In these calls, he encouraged his family members to talk to D.R. to encourage her to not engage in the
15 prosecution. His family members confirm in the calls that they have spoken to her and that they have provided
16 her with money and vehicles to keep D.R. in their good graces.

17 Finally, most likely due to the sustained pressures from the Defendant's family and friends, the victim,
18 D.R., has stopped engaging in the prosecution.

19 ARGUMENT

20 *I. The Evidence of the Defendant's Prior Criminal History that Does Not Involve Domestic Violence is Not Admissible Unless the Defendant Opens the Door to It.*

The Defendant's Motion asks this Court to preclude any and all prior incidents, including prior criminal history and acts, to prove the character of the Defendant. The Defendant is mostly correct that prior crimes are not admissible for under Rule 404(b) unless an exception exists.¹ However, the Defendant is incorrect that this

¹ Rule 404(b) evidence is not barred unless an exception exists. Instead, "[s]ubject to the relevance and unfair prejudice limitations of M. R. Evid. 402-03, Rule 404(b) is merely a contrasting rule of inclusion for prior acts evidence not offered for propensity purposes." *State v. Pelletier*, 2020 MT 249, ¶ 18, 401 Mont. 454, 467, 473 P.3d 991, 1000.

1 information would be barred by Rule 403 because it presents a danger of unfair prejudice that substantially
2 outweighs its probative value, could potentially confuse the issues, and/or mislead the jury. The Defendant
3 concludes that there is no permissible purpose under Rule 404 or 403 for which the Defendant's character or
4 prior wrongs or acts would be admissible.

5 However, it is well-established that once the Defendant opens the door to his own character, the State
6 may introduce rebuttal evidence of its version of the defendant's true character. Mont. R. of Evid. 404(a)(1);
7 *State v. Gowann*, 2000 MT 277, ¶ 23, 302 Mont. 127, 13 P.3d 376. In establishing bad character, the State may
8 admit evidence of both reputation and opinion. *State v. Clark*, 209 Mont. 473, 489, 682 P.2d 1339, 1348. Thus,
9 it is the decision of the Defendant to make the "precarious decision to put character at issue." *Gowann*, ¶ 23.

10 Additionally, pursuant to Rule 404(a)(2), should the Defendant introduce evidence of a character trait of
11 the victim, the State has the right to rebut the same, which may open the door to prior bad acts from the
12 Defendant. *State v. Hardman*, 2012 MT 70, ¶ 18, 364 Mont. 361, 276 P.3d 839. Thus, should the Defendant
13 choose to introduce any character traits of the victim, which are accompanied by their own restrictions and
14 limitations, the State shall do the same with the Defendant through testimony and evidence from witnesses.

15 *II. The Evidence of the Defendant's Past Abuse of the Victim is Admissible Under Rule 404(b), the Transaction*
16 *Rule, and Rules 402 and 403.*

17 A. The Evidence of Other Crimes, Wrongs, or Acts of the Defendant is Admissible Under Rule 404(b).

18 404(b) evidence is "admissible for other purposes, such as proof of motive, opportunity, intent,
19 preparation, plan, knowledge, identity, or absence of mistake or accident." Mont. R. of Evid. 404(b). However,
20 this "is a non-exhaustive 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, 252. "The distinction between admissible and inadmissible Rule 404(b) evidence turns on the intended
purpose of the evidence, *not its substance*." *Id.* (emphasis added) (internal quotation marks omitted).
Furthermore, "[t]here is no requirement in Rule 404(b) that all uncharged acts must be 'similar' and 'near in
time' to the charged act." *State v. Dist. Court of the Eighteenth Judicial Dist.*, 2010 MT 263, ¶ 56, 358 Mont.
325, 350, 246 P.3d 415, 430. The previous incidents of domestic violence between D.R. and the Defendant are

1 admissible under Rule 404(b) because they are relevant to prove motive, pattern, intent, and to explain why the
2 victim recanted her statement and delayed disclosing to law enforcement that the assault happened. Mont. R. of
Evid. 404(b).

3 a. Motive

4 The previous acts of domestic violence show proof of motive. Specifically, they show that the
5 Defendant uses violence to assert power and control over D.R. and to harass her. The prior acts are relevant to
prove his motive in the current assault on D.R.

6 In *Dist. Court of the Eighteenth Judicial Dist.*, ¶¶ 5-6, 54, the defendant—who was charged with
7 murdering her child—argued that prior acts of child abuse against the same child did not show motive or intent
8 to murder the child. Specifically, she “argue[d] that it would be ‘nonsensical’ to suggest that she wanted to harm
[the victim] because of the prior alleged abuse.” *Id.* at ¶ 59. However, the Court held that “[i]n this situation, the
9 uncharged act is cause, and the charged act is effect.” *Id.* And, in other cases, the Court explained that, “the
10 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.* In a footnote to this sentence, the Court provided the following example:

12 [s]uppose that the defendant previously assaulted the victim. The assault tends to show the
defendant’s hostile feelings toward the victim. The defendant is subsequently charged with
13 arson of the victim’s property. The preexisting hostile feelings could serve as the motive for the
arson. . . . Although most of the published opinions involve the motive to commit a violent
crime, the preexisting hostility may furnish the motive for any type of crime which injures the
victim in some way.

14 *Id.* at ¶ 59, n.6.

15 The Court also explained that it is permissible for the State to “use[] the uncharged act to show the
16 existence of motive, and the motive in turn strengthens the inference of the defendant’s identity as the
perpetrator of the charged act.” *Id.*; see also *State v. Crider*, 2014 MT 139, ¶ 25, 375 Mont. 187, 328 P.3d 612,
17 619-620 (discussing *Dist. Court of the Eighteenth Judicial Dist.*, 2010 MT at ¶ 59, 358 Mont. at 350, 246 P.3d at
18 430-31, and stating “a prior bad act may evidence the existence of a motive without supplying the motive. In
19 such cases, the motive is the cause and both the prior acts and the act at issue are effects.”). Therefore, the Court
found that the defendant’s “prior abuse of [the victim], in conjunction with her other conduct and statements
20

1 reflecting that she resented and did not want [the victim], show that she had a motive to cause [the victim]'s
2 death, which strengthens the inference that she is the perpetrator of the charged homicide." *Id.* at ¶ 60.

3 Next, in *Crider*, 2014 MT at ¶¶ 1, 8, 26, 328 P.3d at 615-16, 620, the State sought to admit prior acts of
4 domestic violence between the victim and the defendant in the defendant's trial for Sexual Intercourse without
5 Consent and Partner or Family Member Assault ("PFMA"). The State argued that these prior acts of domestic
6 violence showed the defendant's "motive to exert power and control over his victim." *Id.* The Court agreed and
7 held that the prior acts of domestic violence were "probative of [the defendant]'s motive to control or harass [the
8 victim]," and "[s]uch a motive was relevant . . . to his motive to commit the offense[] of PFMA" that he was
9 currently charged with. *Id.* at ¶ 28; *see also Blaz*, 2017 MT at ¶ 14, 398 P.3d 247, 252 (explaining that "[m]otive
10 can be a broad, nebulous concept" and that "evidence is admissible to show motive when separate acts can be
11 explained by the same motive") (internal quotation marks omitted).

12 Here, the previous incidents of domestic violence against D.R. are similar to the current offense and all
13 "can be explained by the same motive." *Id.* at ¶ 14. On April 17, 2019, in Arlee, Wendy and Kristyn Adams
14 picked D.R. up from the Defendant's parents' house because the Defendant had assaulted D.R. The Defendant
15 followed the trio, and, when they arrived at the Adams home, the Defendant immediately started to assault D.R.
16 He threw her clothes out of the car, threatened her and others, and tackled D.R. who was pregnant. The
17 Defendant fled as soon as law enforcement was called and refused to speak to officers in person. Instead, he
18 spoke to officers over the phone and said it was a "simple argument" that got out of proportion. D.R., who had
19 also fled, was uncooperative but was with the Defendant while he was speaking to law enforcement. D.R. said
20 exactly what the Defendant told her to say: that it was a simple argument. The Defendant sent threatening
messages to Kristyn Adams about her participation in the investigation.

On May 18, 2019, in Arlee, the Defendant's sister called 911 to report that the Defendant had punched,
strangled, and drug a pregnant D.R. into the woods. The Defendant was upset at D.R. because she wanted to
leave his house. The Defendant's mother attempted to protect by the Defendant by denying that the Defendant
drug D.R. into the woods. The Defendant's mother also blamed the incident on D.R. by stating that D.R. is an
alcoholic who has seizures during withdrawal. Officers were unable to locate the Defendant. D.R. spoke to

1 officers and denied that anything occurred.

2 On May 10, 2020, Chelsei Camel, in Arlee, called 911 to report that the Defendant had a pregnant D.R.
3 on the ground and was choking her. Ms. Camel said that D.R.'s legs were kicking. The Defendant immediately
4 fled, and officers were unable to locate him. D.R. hid in her house and was uncooperative with law enforcement.
5 She initially lied to law enforcement but eventually disclosed that she was trying to get away from the
6 Defendant, and he was following her. D.R. minimized the assault and said that the Defendant did not choke her.
7 The Defendant's family again attempted to protect him. His children said that they were asleep and did not see
8 anything. D.R. later signed an affidavit, prepared by the Defendant's attorney, stating that no assault occurred.

9 On November 20, 2020, in Arlee, an unknown caller called 911 to report a fight between the Defendant
10 and D.R. The Defendant immediately fled the scene. D.R. said that she and the Defendant were arguing over her
11 phone. D.R. damaged the Defendant's windshield. D.R. said that the Defendant broke her phone in retaliation.
12 Again, the Defendant's family attempted to protect him. While the Defendant fled the scene, he sent his sister,
13 Annie, to tell officers that the Defendant wanted to press charges against D.R. Officers noticed that D.R. had a
14 black eye. Later, D.R. disclosed that the Defendant caused this black eye by punching her with closed fists.

15 Finally, in the instant case, D.R. called dispatch to report an assault that happened two days prior. D.R.
16 said that the Defendant tied her up, threatened to kill her, punched her, pulled her using her hair, strangled her,
17 and threatened to drive her up into the woods where no one would find her. D.R. said that she could not report
18 the assault earlier because the Defendant isolates her from family and friends. D.R. said that she does not have a
19 phone. D.R. said that the argument happened because the Defendant gets possessive over their children and her.
20 Specifically, the Defendant is not allowed at D.R.'s house, so the Defendant gets concerned that D.R. has men at
the house. Subsequently, yet again, the Defendant's family attempted to protect him. Soon after the Defendant
was put in jail, the Defendant's father—in an attempt to persuade the State to dismiss the charges—collected
statements and screenshots from D.R. and various family members. The Defendant's father also provided D.R.
with a vehicle and maintained a good relationship with D.R. to keep D.R. on the Defendant and the family's
side.

These incidents share a common theme. The Defendant gets upset with D.R. when he perceives that he

1 is not in control of her. On April 7, 2019, D.R. left the Defendant's parents' house, and the Defendant followed
2 her. On May 8, 2019, D.R. wanted to leave to go to her grandpa's house and was sitting in a car and preparing to
3 leave the house. Instead, the Defendant strangled her and drug her into the woods with him. On May 10, 2020,
4 D.R. was walking away from the Defendant, and the Defendant followed her. He pushed her down and strangled
5 her. On November 20, 2020, D.R. and the Defendant were arguing over her phone. If D.R. has a phone, she is
6 not isolated and therefore not under the Defendant's control. And, on January 9, 2021, the Defendant became
7 upset that he did not have control over his children and D.R. given that he is not allowed to be at D.R.'s house.
8 In all of these incidents, the Defendant reacts with physical violence. Specifically, he punches, strangles, and
9 kidnaps D.R. Taken together, these acts demonstrate the Defendant's motive to exert power and control over
10 D.R. and his motive to harass her. *See Crider*, ¶ 28.

11 b. Identity and Pattern

12 The previous acts of domestic violence show proof of identity and pattern. Specifically, they show that
13 the Defendant exhibits a pattern of behavior that was demonstrated in the charged act.

14 In *Blaz*, 2017 MT at ¶¶ 4-9, 398 P.3d at 250-51, a defendant was charged with murdering his infant
15 daughter, and the State sought to introduce evidence of a previous PFMA conviction from weeks earlier. The
16 previous PFMA involved the defendant and his wife who was also the murder victim's mother. *Id.* The previous
17 PFMA also involved the victim because the mother was holding the victim when the defendant attacked the
18 mother. *Id.* at ¶ 4. The Court explained that "[u]nder Rule 404(b), identity and pattern often overlap because
19 unique behavior patterns can be used to establish identity." *Id.* at ¶ 16. Thus, "evidence of distinctive or
20 idiosyncratic methods can illustrate criminal signatures and demonstrate a pattern, which can be used to identify
a specific individual." *Id.* The Court noted that the previous PFMA was similar to the current homicide because
the homicide victim was also a victim in the previous PFMA. *Id.* at ¶ 17. Moreover, the previous PFMA
"illustrate[d] a pattern of resolving family issues with violence and demonstrate[d] [the defendant's] careless
disregard for [the victim's] safety and wellbeing." *Id.* Also, both incidents involved violent injuries to the head.
Id. So, the Court concluded that the previous PFMA was admissible because it established "a pattern of
behavior, which is a permissible purpose and admissible under Rule 404(b)." *Id.*

1 Here, the previous incidents of domestic violence against D.R. are similar to the current offense and all
2 "can be explained by the same motive." *Id.* at ¶ 14. The Defendant is possessive over his children and D.R. He is
3 jealous of D.R. and has a need to exert power and control over D.R. The abuse often occurs in front of the
4 couple's daughters. All of the incidents occurred in Arlee, Montana. D.R. was pregnant three of the five times.
5 Each time, the Defendant gets upset because D.R. is leaving or that he cannot be at the same house as D.R. Each
6 time, someone other than D.R. calls 911. Each time, the Defendant immediately flees. Each time, D.R.
7 minimizes or denies what happens and does not cooperate with investigators. Each time, the Defendant's family
8 does everything possible to ensure that the Defendant does not get in trouble. They blame the victim and assert
9 that she is an alcoholic who has seizures from withdrawal.

10 These incidents share a common theme. D.R. tries to leave or separate herself from the Defendant. The
11 Defendant reacts with physical violence. They were all physical assaults where the Defendant punched,
12 strangled, and kidnapped D.R. Taken together, these incidents "illustrate a pattern of resolving family issues
13 with violence and demonstrate [the defendant's] careless disregard for [the victim's] safety and wellbeing." *Id.*
14 at ¶ 17. "These facts [a]re evidence of a pattern of behavior, which is a permissible purpose and admissible
15 under Rule 404(b)." *Id.*

16 c. Intent

17 The previous acts of domestic violence show intent. Specifically, they rebut the Defendant's defense of
18 justifiable use of force given that the Defendant told Lake County Sheriff's Detective Erwin Lobdell that D.R.
19 had assaulted him.

20 In *State v. Sadowski*, 247 Mont. 63, 73, 805 P.2d 537, 543 (1991) (overruled in part on other grounds,
State v. Ayers, 2003 MT 114, ¶¶ 74, 76, 315 Mont. 395, 68 P.3d 768), a defendant admitted to purposely and
knowingly killing the victim. The defendant killed the victim with a firearm while the defendant was
intoxicated. *Id.* at 66-67, 805 P.2d at 539. The defendant relied on a justifiable use of force defense. *Id.* at 68,
805 P.2d at 540. The State admitted evidence about a prior incident that occurred "two years and eight months
prior to the homicide." *Id.* at 69, 805 P.2d at 540. In the prior incident, the defendant "had been having marital
problems and phoned the sheriff's office and informed them that he was going to shoot himself." *Id.* at 69, 805

1 P.2d at 541. A sheriff's deputy went to the defendant's house, and the defendant "pointed a gun at him,
2 allegedly stating he now had control over the situation rather than" the deputy. *Id.* The Court found that the prior
3 incident was properly admitted. *Id.* at 74, 805 P.2d at 543. The Court stated that, "because the defendant admits
4 that he purposely and knowingly killed [the victim], the prior uncharged misconduct actually is relevant towards
5 the reasonableness of [the defendant]'s claim of self defense, i.e., whether he acted with criminal intent or in self
6 defense." *Id.* at 73, 805 P.2d at 543. The Court found that, "[i]n both instances, the defendant while intoxicated
pointed a firearm at an invitee in his home allegedly to gain control of what he believed to be an out-of-control
situation in his own home." *Id.* at 74, 805 P.2d at 543.

7 Here, like the earlier incident in *Sadowski, id.*, the previous incidents of domestic violence that the State
8 seeks to introduce are substantially similar to the instant offense. And, because the Defendant will assert that he
9 was merely defending himself, "the prior . . . misconduct actually is relevant towards the reasonableness of [the
10 defendant]'s claim of self defense, i.e., whether he acted with criminal intent or in self defense." *Id.* at 73, 805
P.2d at 543.

11 d. Other Purposes

12 The previous acts of domestic violence are admissible for the "other purposes" contemplated by Rule
13 404(b). Specifically, they explain why D.R. did not immediately report the abuse and why she is now no longer
14 engaging in the prosecution of the Defendant. It is clear that the Defendant will argue that D.R. is at fault
15 because the Defendant will not only assert a justifiable use of force defense but will also explain that D.R. and
the Defendant still want to work on their relationship.

16 In *State v. Ankeny*, 2018 MT 91, ¶ 6, 391 Mont. 176, 417 P.3d 275, 279, the defendant was charged with
17 two counts of PFMA. While he was in jail on the charges, the defendant wrote several letters to the victim where
18 he attempted to persuade the victim to not move forward with the charges. *Id.* at ¶ 11. The Court held that "the
19 State had permissible purposes to introduce the letters" because the letters "contained [the defendant]'s
20 apologies and near-admissions to the charges, his requests that the [the victim] attempt to get charges dropped,
and indications of his abusive, controlling relationship with her." *Id.* at ¶ 32. The Court stated that the letters
constituted "all 'other purposes' contemplated under Rule 404(b) for proper admission of evidence." *Id.*

1 Additionally, the Court explained that “[e]vidence of a defendant’s other acts is a permissible purpose under
2 Rule 404(b) when offered to demonstrate another person’s state of mind that caused her to act as she did.” *State*
3 *v. Clemans*, 2018 MT 187, ¶ 11, 392 Mont. 214, 422 P.3d 1210, 1213 (quoting *Ankeny*, 2018 MT at ¶ 38, 417
4 P.3d at 286) (emphasis added). Moreover, the letters were not unfairly prejudicial under Rule 403 because they
5 “demonstrated a typical domestic violence cycle of abuse, and explained why [the victim] delayed reporting the
6 . . . incident.” *Ankeny*, 2018 MT at ¶ 34, 417 P.3d at 285.

7 Here, the previous acts of domestic violence explain why D.R. did not immediately report the abuse and
8 why she has recanted her statements. It shows that she is/was in an abusive relationship with the Defendant that
9 mirrored the “typical domestic violence cycle of abuse.” *Id.*

10 B. The Evidence is Admissible Under the Transaction Rule Found in Section 26-1-103, MCA

11 “The transaction rule . . . is a statutory provision distinct from Rule 404(b) and sets forth an exception to
12 the 404(b) bar on prior conduct.” *State v. Haithcox*, 2019 MT 201, ¶ 17, 397 Mont. 103, 447 P.3d 452. The
13 transaction rule is found in § 26-1-103, MCA. *See id.* “Section 26-1-103, MCA, provides ‘where the declaration,
14 act, or omission forms part of a transaction which is itself the fact in dispute or evidence of that fact, such
15 declaration, act, or omission is evidence as part of the transaction.’” *State v. Seyler*, 2016 MT 226, ¶ 13, 384
16 Mont. 497, 500, 380 P.3d 743, 744. Thus, § 26-1-103, MCA, “allows transaction evidence when acts are
17 inextricably linked and explanatory of the charges,” *id.*, because “[i]t is well established that evidence which
18 tends to explain circumstances surrounding the charged offense is relevant, probative and competent.” *Id.*
(quoting *State v. Bauer*, 2002 MT 7, ¶ 22, 308 Mont. 99, 39 P.3d 689, 694). Evidence admitted pursuant to the
19 transaction rule is admissible “because it is theoretically difficult to subdivide a course of conduct into discrete
20 criminal acts and ‘other’ conduct and . . . it is difficult for a witness to testify coherently to an event if the
witness is only permitted to reference the minutely defined elements of the crime.” *Haithcox*, ¶ 17 (internal
quotation marks omitted).

21 In *Haithcox*, ¶ 12, the defendant was convicted at trial of aggravated assault, aggravated kidnapping,
22 tampering with a witness, and misdemeanor assault for an incident involving his girlfriend, the victim, that took
place over the course of many hours on April 11, 2016. The defendant “filed a motion in limine seeking to

1 exclude certain evidence concerning his relationships with other women, evidence showing he used a false name
2 and repeatedly lied about his past employment, evidence of his consumption of alcohol, and evidence regarding
3 the financial aspect of his and [the victim]’s relationship.” *Id.* at ¶ 15. Moreover, he sought to preclude “the
4 introduction of explicit details of his and [the victim]’s arguments, specifically the offensive names he called
her.” *Id.*

5 The Court found that the evidence the Defendant sought to exclude “was properly admitted under the
6 transaction rule and the risk of unfair prejudice did not substantially outweigh its probative value.” *Id.* at ¶ 18.
7 The Court reasoned that the charged offenses constituted a transaction that was “‘both temporally and factually
8 broad,’ and therefore encompass[ed] specific aspects of [the defendant]’s behavior *dating back to the beginning*
9 *of the relationship.*” *Id.* (quoting *State v. Guill*, 2010 MT 69, ¶ 30, 36, 355 Mont. 490, 228 P.3d 1152) (emphasis
10 added). And, the Court stated that the evidence the Defendant sought to exclude was “important to establish the
11 source of tension building up to the assault,” as well as to show the defendant’s “motive behind the near deadly
12 assault.” *Haithcox*, ¶ 18. Additionally, the Court held that “the prosecution used evidence of [the defendant]’s
13 prior conduct not to establish his propensity for assault, but to provide necessary context and clarify for jurors
14 the reasoning behind [the victim]’s otherwise perplexing behavior.” *Id.* at ¶ 19. This perplexing behavior—
15 which the defense focused on at trial to undermine the victim’s credibility—was, despite being brutally
16 assaulted the night before: spending about thirty minutes the morning after the assault taking photographs of her
17 injuries; “fifteen minutes warming up her car,” and not “immediately go[ing] to the police station, which was
18 within walking distance from her home.” *Id.* The Court stated that the facts the Defendant sought “to exclude
19 from evidence were inextricably intertwined with the assault because it shed light on both the atmosphere of
20 abuse and manipulation that had developed, and [the victim]’s resulting behavior.” *Id.* Specifically, the facts
showed “a pattern in the relationship which left [the victim] simultaneously fearful and hopeful that [the
defendant] would change, which explained why [the victim] would not have immediately contacted the police.”
Id. The facts “illustrate[d] the complexity of [her] behavior and, in turn, maintain[ed] her credibility.” *Id.* And,
the Court explained that “[w]ithout candid insight into the nature of [the defendant’s] and [the victim]’s
relationship, including [the defendant]’s verbal abuse and financial manipulation, the jury would have received

1 an incomplete, and potentially misleading narrative.” *Id.*

2 Next, in *State v. Seyler*, 2016 MT 226, ¶ 3, 384 Mont. 497, 498, 380 P.3d 743, 744, the State charged a
3 defendant with two counts of felony Partner or Family Member Assault for incidents that occurred on
4 September 25, 2013, and September 30, 2013. The State introduced evidence that, after the assault on
5 September 30, the defendant yelled at the victim and took her car. *Id.* at ¶ 13. The defendant argued that this was
6 prior bad act evidence barred by Rule 404(b). *Id.* at ¶ 7. The trial court found that the prior bad act evidence was
7 “admissible under M. R. Evid. 404(b) relevant to [the defendant]’s justifiable use of force defense and
8 admissible under § 26-1-103, MCA, as transaction evidence.” *Id.* at ¶ 8. The Montana Supreme Court found that
9 the trial did not abuse its discretion by admitting the evidence under Rule 404(b) but explained that the evidence
10 was admissible pursuant to the transaction rule found in Section 26-1-103, MCA. *Id.* at ¶¶ 15-16. Specifically, it
11 held that “the facts that [the defendant] was yelling at [the victim] and took her car after the altercation are
12 inextricably linked to and explanatory of the facts regarding the nature and power dynamic of the relationship.”
13 *Id.*

14 Here, the Defendant gets upset with D.R. when he perceives that he is not in control of her. On April 7,
15 2019, D.R. left the Defendant’s parents’ house, and the Defendant followed her. On May 8, 2019, D.R. wanted
16 to leave to go to her grandpa’s house and was sitting in a car and preparing to leave the house. Instead, the
17 Defendant strangled her and drug her into the woods with him. On May 10, 2020, D.R. was walking away from
18 the Defendant, and the Defendant followed her. He pushed her down and strangled her. On November 20, 2020,
19 D.R. and the Defendant were arguing over her phone. If D.R. has a phone, she is not isolated and therefore not
20 under the Defendant’s control. And, on January 9, 2021, the Defendant became upset that he did not control
over his children and D.R. given that he is not allowed to be at D.R.’s house. In all of these incidents, the
Defendant reacts with physical violence. Specifically, he punches, strangles, and kidnaps D.R.

21 This “evidence [is] inextricably intertwined with the assault because it shed[s] light on both the
22 atmosphere or abuse and manipulation that had developed, and [D.R.]’s resulting behavior,” *Haithcox*, ¶ 19,
such as her delayed disclosure and her recantation. Next, as explained previously, the prior instances of
domestic violence that the State seeks to introduce are substantially similar to the instant offense, and they

1 demonstrate the Defendant's motive to exert power and control over D.R. The previous acts of domestic
2 violence are therefore "important to establish the source of tension building up to the assault," as well as to show
3 the defendant's "motive behind the . . . assault." *Id.* at ¶ 18. Finally, the prior acts of domestic violence "provide
4 necessary context and clarify for jurors the reasoning behind [D.R.]'s otherwise perplexing behavior." *Id.* at ¶
5 19. They explain why D.R. has recanted her statements. This gives the jury "candid insight into the nature of
6 [the defendant's] and [D.R.]'s relationship," and, without it, provides the jury with "incomplete, and potentially
7 misleading narrative." *Id.*

8 C. The Evidence is Admissible Under Rules 402 and 403.

9 To begin with, "[t]he Rule 403 balancing test favors admission," *State v. Colburn*, 2018 MT 141, ¶ 16,
10 391 Mont. 449, 419 P.3d 1196, 1200, so "[e]ven if evidence is potentially unfairly prejudicial, the Rule 403
11 balancing test favors admission—the risk of unfair prejudice must substantially outweigh the evidence probative
12 value." *Blaz*, 2017 MT at ¶ 20, 398 P.3d at 254. And, "*a limiting instruction generally cures any unfair*
13 *prejudice.*" *Id.* (emphasis added).

14 Here, the prior bad act evidence is relevant because it tends to prove the Defendant's motive, pattern,
15 and intent. The evidence also provides a clearer picture to the jury about why D.R. did not immediately report
16 and why she has now recanted her statements. *See, e.g., Clemans*, 2018 at ¶ 11, 422 P.3d at 1213 (quoting
17 *Ankeny*, 2018 MT at ¶ 38, 417 P.3d at 286) ("Evidence of a defendant's other acts is a permissible purpose
18 under Rule 404(b) when offered to demonstrate another person's state of mind that caused her to act as she
19 did."). It is clear that the Defendant will argue that D.R. is at fault because the Defendant will not only assert a
20 justifiable use of force defense but will also argue that the Defendant is lying because of her delayed disclosure
and her recantation. However, like peer-reviewed studies and science has borne out, she has unknowingly been
locked in the domestic violence cycle of violence. *See Haithcox*, ¶ 11 ("Abuse within intimate relationships
often follows a pattern known as the cycle of violence, which consists of a tension building phase, followed by
acute battering of the victim, and finally a contrite phase where the batterer's use of promises and gifts increases
the battered woman's hope that violence has occurred for the last time.") (internal quotation marks and citations
omitted). D.R. should be able to explain why she delayed her disclosure and why she recanted her statements,

1 and the incidents of prior domestic violence are relevant to her reasons. Finally, the evidence is relevant to show
2 that the Defendant intended to commit the assault, and therefore the assault was not justified.

3 The prior bad act evidence is not unfairly prejudicial. *See, e.g., Colburn*, 2018 MT at ¶¶ 3-4, 18, 419
4 P.3d at 1198, 1200 (finding that evidence that the defendant possessed child pornography in a case where the
5 defendant was charged with incest was not unfairly prejudicial); *State v. Belanus*, 2010 MT 204, ¶ 14, 357
6 Mont. 463, 240 P.3d 1021 (“In a criminal prosecution, almost all evidence offered by the prosecution is going to
7 be prejudicial to the defendant”). For example, in *Haithcox*, ¶ 20, the defendant argued that the admission of his
8 obscene insults made to the victim were prejudicial. Specifically, on an audio recording, the defendant called the
9 victim, “who is of Caucasian and Native American heritage, a police bitch, white bitch from hell, gump, and a
10 grimy ass Indian, among other names.” *Id.* at ¶ 6. He also yelled at her, “[y]ou’re nothing’ . . . approximately
thirty-five times,” called her a “nigger, a fucking white bitch, a raggedy-ass ho bag bitch,” and “a pink bitch.”
Id. The Court held that these statements “were relevant to establish motive and the risk of unfair prejudice did
not substantially outweigh the evidence’s probative value.” *Id.* at ¶ 20.

11 Finally, any prejudice to the Defendant or confusion of the jury created by using this evidence can be
12 adequately safeguarded against by a jury instruction and admonitions that clarify that this evidence should not
13 be used to support a finding that the Defendant committed the instant offense or the previous offenses but should
14 only be used for the express purpose of showing that the Defendant knew he would cause fear, and the victim’s
15 fear was reasonable. *See Haithcox*, ¶ 21 (“[A] limiting instruction generally cures any unfair prejudice.”)
(internal quotation marks omitted). The State will submit a jury instruction to that effect.

16 CONCLUSION

17 For the foregoing reasons, the State objects to the Defendant’s motion in limine. The State should be
18 allowed to introduce the Defendant’s criminal history if he opens the door to it. And, the State should be
19 allowed to introduce evidence of prior domestic violence between the Defendant and D.R. because they are
20 admissible pursuant to Rules 402, 403, 404, and the transaction rule.

MOLLY OWEN
Deputy Lake County Attorney