

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31089

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

SHEAH MARIE THURSTON,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLANT'S BRIEF

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Notice of Appeal Filed on May 15, 2025

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

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vs.

SHEAH MARIE THURSTON,

Defendant and Appellant.

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR.” The transcript of the Initial Appearance held on September 6, 2024 is referred to as “IA.” The transcript of the Arraignment Hearing held on October 28, 2024 is referred to as “AH.” The transcript of the Motions Hearing, held December 30, 2024, is referred to as “MH.” The transcript of the Pretrial Conference, held March 3, 2025, will be referred to as “PC.” The transcript of the Voir Dire portion of the Jury Trial, held on March 20, 2025, will be referred to as “VD.” The transcripts of the Jury Trial held March 20, 2025 through March 21, 2025 are referred to as “JT1” and “JT2”. The Transcript of the Sentencing Hearing held April 28, 2025 is referred to as “ST.” All references to documents will be followed

by the appropriate page number. Exhibits are referred to as “Ex.” followed by the exhibit number.

Defendant and Appellant, Sheah Thurston, is referred to as “Thurston.”

Victim and complaining witness, Tessa Conley, is referred to as “Conley.”

JURISDICTIONAL STATEMENT

Thurston appeals the Judgment and Sentence entered May 6, 2025, by the Honorable Joshua Hendrickson, Circuit Court Judge of the Seventh Judicial Circuit. SR 288-289. Thurston’s Notice of Appeal was filed May 15, 2025. SR 297. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUE

- I. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY ALLOWING THE STATE TO ELICIT TESTIMONY CONCERNING OTHER-ACTS EVIDENCE.

The circuit court admitted other-acts evidence over Thurston’s objection, finding them relevant and admissible under SDCL 19-19-404(b).

State v. Evans, 2021 S.D. 12, 956 N.W.2d 68

State v. Lassiter, 2005 S.D. 8, 692 N.W.2d 171

State v. Steele, 510 N.W.2d 661 (S.D. 1994)

SDCL 19-19-404

STATEMENT OF CASE

On September 18, 2024, a Pennington County Grand Jury returned a two-count Indictment charging Thurston with Aggravated Assault (Domestic Abuse),

in violation of SDCL 22-18-1.1(8), and Simple Assault (Domestic Abuse), in violation of SDCL 22-18-1(5). SR 22-23. Arraignment on the Indictment was held on October 28, 2024. *See* AH.

Jury trial began on March 20, 2025. *See generally* VD; JT1; JT2. Prior to trial, the State filed a Notice of Intent to Offer Other Acts Evidence Under SDCL 19-19-404(b). SR 97-107. In the filing, the State expressed its intent to offer evidence of several prior incidents between Thurston and three separate romantic partners. *Id.* The State asserted the evidence was admissible “to show motive, intent, common scheme or plan, and the nature of the relationship.” SR 107. The State intended to offer evidence of four prior incidents between Thurston and Conley. SR 98-99. The State’s filing also referenced three prior incidents between 2021 and 2022 where Thurston physically expressed jealousy or discontent with a previous girlfriend, Evelyn Chasinghorse (“Chasinghorse”).¹ SR 99-100. The State also sought to introduce evidence of incidents from Thurston’s relationship with Indago Banks (“Banks”). SR 100.

Thurston filed a written objection to the admission of this evidence. SR 112-118. The circuit court found the entirety of the other acts evidence was “similar victims, similar acts showing common scheme, motive, or intent, and that the probative value outweighs the potential prejudice, adopting the arguments by the State in their motion.” JT1 6. The circuit court further stated “I

¹ Chasinghorse indicated at trial her surname is one word, although her name appears in various filings with a space (i.e. “Chasing Horse”). JT1 108.

also don't think it necessary based upon the proffer made that there be a hearing prior," concluding, "I think it's sufficient with what was presented in the notice to present." JT1 6-7.

Prior to Chasinghorse's testimony, Thurston renewed her objection to the testimony. JT1 107. The circuit court noted the objection and proceeded to read an instruction to the jury. JT1 107-108. The same instruction was included in the final jury instructions. SR 180. Chasinghorse testified to events occurring in 2021 and 2022. JT1 108-117. The State also called Banks to testify. JT1 118. The circuit court stated prior to Banks' testimony, "I'm just going to remind the jury the same instruction as previously given before the last witness applies to this witness as well." JT1 119. Banks testified her relationship with Thurston was during 2019. JT1 120.

At the close of the State's evidence, Thurston motioned the circuit court for an order granting a judgment of acquittal. JT1 161. The State resisted the motion. *Id.* at 161-162. The circuit court denied Thurston's motion. *Id.* at 161-162.

The jury returned a verdict of guilty on both counts of the Indictment. JT2 193; SR 198. Thurston was sentenced by Judge Hendrickson on April 28, 2025. *See generally* ST. On Count 1, Judge Hendrickson imposed a sentence of four years in the South Dakota State Penitentiary, credit for 41 days served. ST 16; SR 288. On Count 2, the circuit court imposed a sentence of "41 days credit for time served." SR 288.

STATEMENT OF FACTS

Thurston and Conley began dating in November of 2023. JT1 16-17. During Labor Day weekend of 2024, Conley was in the process of moving into Thurston's residence in Rapid City. JT1 17-18. On September 2, 2024, Conley met with her son's father, Howard Harrison ("Harrison"), to pick up her son. JT1 15-19. Conley testified she left and called Thurston, who accused Conley of "hanging out with" Harrison. JT1 19. Conley provided testimony that Thurston demanded to see Conley's phone when she returned to the residence. JT1 19-20. When Conley arrived at the residence, Thurston was in her own vehicle. JT1 20. Conley parked in front of the residence and Thurston entered Conley's vehicle, sitting in the passenger side. JT1 20. Conley testified that Thurston was angry, and Conley proceeded to call Harrison and "put it on speaker phone." JT1 21. Conley's son was seated in a car seat directly behind the driver's seat. JT1 23

During the call, Conley asked Harrison to tell Thurston that "there was nothing going on between us." JT1 21. According to Conley, Thurston yelled, and "went for [Conley's] phone," knocking it to the floor between the seat and the car door. *Id.* Without unbuckling her seat belt, Conley opened the car door and tried to retrieve her phone. *Id.* Conley testified that while she attempted to retrieve her phone, "[t]he seat belt was grabbed around my neck," preventing her from being able to reach her phone. *Id.* Conley stated that Thurston was holding the seat belt and "going for my phone." JT1 21-23. In the process, Thurston bit her forearm and scratched her leg. JT1 23. Conley recounted pushing Thurston's head away,

giving her space to unbuckle the seat belt, exit the vehicle, and grab her phone.

Id. Then, Conley went inside the home, leaving her son in the vehicle. *Id.*

Conley's testimony continued describing the altercation. According to Conley, while "facing the opposite direction of the door," she exclaimed, "[w]hat the fuck, Sheah? What's your problem?" JT1 23-24. At that point, Conley alleged Thurston put her in a headlock, indicating Thurston's "right arm went over my throat and her left arm locked," causing her to try to scream, though unable. JT1 24. Conley described struggling with balance, "going in and out," and fearing death. JT1 24-25. Conley testified that Thurston pinned her down with her knee, grabbed Conley's phone and "yelled something," hit Conley with Conley's phone, then grabbed Conley's hair and hit her head on the floor. JT1 25. Conley noticed blood and ran to the bathroom where she observed a head injury. *Id.* At that point, Conley ran out of the house. JT1 26.

Conley, now back in her vehicle, drove to her ex-husband's residence to pick up her daughters. JT1 26-27. When she arrived, she told the ex-husband she was in an accident and needed to go to the hospital. JT1 26-27. At the hospital, Conley was joined by her friend Shanna Miller. JT1 29. Conley initially told medical staff she "was working in [her] yard and [she] had had an accident." JT1 29. Dr. Jed Christensen testified that Conley's initial statement was that "a box of some sort fell off a shelf and hit her on the head." JT1 96.

Conley reported the incident to law enforcement two days later. JT1 30. An officer photographed her arms and neck. *See* Ex. 5; Ex. 6; Ex. 7. The State

admitted these three photographs into evidence, JT1 32, and also admitted photographs Conley had taken of herself. *See* Ex. 8a; 8b; 9a; 9b; 10a; 10b; 11a; 11b; 12a; 12b; JT1 35.

The State elicited testimony regarding Conley's perception of Thurston's jealousy about Conley's relationship to Harrison. JT1 36. Conley stated that on February 6, 2024, Thurston's jealousy became apparent when Conley answered a phone call from Harrison. JT1 37-39. There was no physical altercation, but Conley perceived Thurston's jealousy. *Id.* Conley also recounted Memorial Day of 2024, another incident where Thurston, allegedly jealous about Harrison, confronted Conley and grabbed around her neck. JT1 39-41. Conley also described a later incident where Thurston had gone through Conley's phone and confronted her, eventually throwing a hair clippers at her, grabbing her, and punching her back. JT1 45-47. On cross-examination, Conley admitted that "there was a bit of mutual she would grab your neck, you would grab her neck," exchange during the prior incidents. JT1 50.

The State called Krista Heeren-Graber to testify as an expert "in the field of social work and domestic abuse." JT1 65-71. Heeren-Graber told the jury about the dynamics of an abusive domestic relationship, predominantly covering the "power and control dynamics that are present by the offender towards the victim." JT1 72. *See also* JT1 72-96. Heeren-Graber, however, did not review materials in relation to the present case. JT1 89.

Following Heeren-Graber's testimony, the state called Chasinghorse.

Chasinghorse provided the jury with detailed testimony related to incidents that occurred when she was in a relationship with Thurston from 2021 until 2023. JT1 109. Chasinghorse's testimony alleged Thurston acted out in jealousy, brandished a kitchen knife, put hands around her throat, burned a cigarette out on her stomach, placed a knife against her throat, and put dog feces in her mouth. JT1 110-116.

Banks also supplied the jury with other-acts evidence. JT1 118-126. She was in a romantic relationship with Thurston in 2019. JT1 120. At one point during the relationship, Thurston became jealous and attempted to kick her out of the residence. JT1 122. On another occasion, Banks testified that Thurston "grabbed me by my neck and pinned me to the ground," threatened her, and eventually let go. JT1 124-125.

Thurston testified in her own defense. *See* JT1 127-150. Regarding Conley's allegations from September 2, 2024, Thurston acknowledged that she and Conley had been arguing and were on the verge of breaking up. JT1 128. After Conley had left to pick up her son that day, Thurston called Conley because she didn't want her to return to the residence. JT1 129-130. Despite the call, Conley returned. JT1 130. Thurston was in her vehicle, parked in the driveway when Conley arrived. *Id.* She approached Conley and they began arguing. JT1 130. Thurston admitted that "the infidelity had something to do with it," but the context was larger than that issue alone. JT1 130-131. They argued about Conley's infidelity, Conley's stress

about being “kicked out,” financial stress, and Thurston working with Child Protective Services for her nephews’ wellbeing. JT1 130-131.

Thurston recalled Conley’s call to Harrison imploring Thurston to “[a]sk him. Nothing is going on between us.” JT1 132. Thurston asked how she could trust Harrison’s word when Conley had told her things which led her to question Harrison’s honesty. JT1 132; *See* JT1 131-132 (Thurston testifying that Conley alleged Harrison “was abusive to her” and “[h]e wasn’t doing what he was supposed to be doing on their ends”).

Amidst this disagreement, Conley grabbed Thurston’s phone, demanding “[s]how me your phone then. Show me your phone.” JT1 132. In the struggle between both Conley and Thurston trying to grab Thurston’s phone, it fell to the floor between the driver’s door and the driver’s seat. JT1 132-133. Thurston then reached over Conley, attempting to retrieve her own phone. JT1 133. Upon finally reaching her phone, Thurston got out of the car and went into the house, followed by Conley. *Id.* Thurston denied pulling on Conley’s seat belt. *Id.* Thurston explained that she had to reach over Conley to retrieve her phone, which Conley had dropped from her hand after Conley tried to take it. JT1 133-134.

Thurston testified that she entered the home first, then Conley followed. JT1 134. Thurston described Conley “trying to grab on to me,” around her shoulders, arms, and back, while yelling and standing in front of Thurston. JT1 135. At that point, Thurston and Conley stumbled, with

Conley falling backwards and Thurston falling forwards on top of her. JT1 135-136. Thurston believed Conley's head injury occurred when the two fell, causing Conley to hit her head on a nightstand. JT1 144. Thurston testified that her arms "were never around her neck, were never close." JT1 137. Thurston denied putting her hand around Conley's throat. *Id.*

Conley spent the next two days trying to convince Thurston to continue their relationship. JT1 137-138. Because Thurston wanted to cut ties with Conley, Conley called Thurston and said "[w]ell, I'm gonna... I'm gonna fuck up your life" and make a report at the Public Safety building. *Id.* After the call, Thurston traveled to the Public Safety building. JT1 138. Conley was already there, and Thurston was able to briefly speak with officers before being placed under arrest. *Id.*

The State asked Thurston about the other acts involving Conley. Thurston explained that during the Memorial Day incident, "an argument happened," and there was mutual physical aggression. JT1 142. Thurston denied the other prior incidents. JT1 140-143. She also denied having kicked Banks and her son out of the residence and denied ever placing her hand around Banks' throat. JT1 139-140. She denied accusing Chasinghorse of infidelity, brandishing a knife around her, restraining her on the ground, burning her with a cigarette, or putting dog feces in her mouth. JT1 140.

Thurston detailed her encounter with Officer Bicskei, and

explained that by that time Officer Bicskei decided to arrest her, she was unable to show the extent of her bruising before being taken to jail for four or five days. JT1 145-146. Thurston described how her long-sleeved shirt prevented photographs from documenting bruises on her chest and arms. JT1 145-147.

STANDARD OF REVIEW

A circuit court's decision to admit evidence under SDCL 19-19-404(b) is reviewed for abuse of discretion. *State v. Evans*, 2021 S.D. 12, ¶ 25, 956 N.W.2d 68, 79. Before admitting other act evidence, "the circuit court must determine whether the evidence is relevant to a material issue other than character and whether its probative value is substantially outweighed by the danger of unfair prejudice." *Id.* "To obtain a new trial, a defendant must prove not only that the trial court abused its discretion in admitting the evidence, but also that the admission resulted in prejudice." *State v. Lassiter*, 2005 S.D. 8, ¶ 13, 692 N.W.2d 171, 175 (citing *State v. Red Star*, 2001 S.D. 54, ¶10, 625 N.W.2d 573, 577).

"Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." SDCL 19-19-404(b). However, this evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *Id.* "[T]rial courts must be ever vigilant so that the exclusionary sentence of [SDCL 19-19-404(b)] is not entirely swallowed up by the exceptions."

State v. Chapin, 460 N.W.2d 420, 421 (S.D. 1990). The admissibility of evidence in accord with 404(b) “depends on a two-step analysis: (1) whether the evidence is relevant to an issue other than character, and (2) whether ‘the probative value of the evidence is substantially outweighed by its prejudicial effect...’” *Lassiter*, 2005 S.D. 8, ¶ 15, 692 N.W.2d at 176 (quoting *State v. Ondricek*, 535 N.W.2d 872, 873 (S.D. 1995)).

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING OTHER-ACTS EVIDENCE.

The circuit court’s decision to admit other-acts evidence was an abuse of discretion because it did not meaningfully conduct the required two-part balancing test, the evidence was too remote, and the probative value of the testimony describing the other-acts evidence was substantially outweighed by its prejudicial effect.

A. The circuit court abused its discretion in conducting a cursory balancing-test and declining to hold a hearing prior to admitting the other-acts testimony.

In this case, the circuit court abused its discretion by allowing the admission of evidence under 404(b) absent a pre-trial evidentiary hearing or meaningful review. This Court has previously held that “[o]nly by performing a meaningful analysis of each case can the courts assure that the exceptions do not, in fact, entirely swallow the rule of inadmissibility.” *State v. Steele*, 510 N.W.2d 661, 668 (S.D. 1994) (citing *Chapin*, 460 N.W.2d at 422). In *Steele*, the trial court’s findings simply stated that the evidence of prior bad acts was admissible for a

purpose other than character. 510 N.W.2d at 667-68. Like this case, the trial court in *Steele* failed to perform an analysis of the prior bad acts. *Id.* at 668. Here, the circuit court merely offered a conclusory statement in admitting the other acts evidence. *See* JT1 6-7. The circuit court's findings were "generic in nature." *Steele*, 510 N.W.2d at 667-68 (quoting *Chapin*, 460 N.W.2d at 422). Given the circuit court's failure to allow a pre-trial evidentiary hearing in this case, a "meaningful analysis" was not conducted. Similar to *Steele*, "because the trial court failed to perform the proper analysis, the conviction is reversible on this ground." *Id.* at 668.

This case is also distinguishable from *State v. Phillips*, 2018 S.D. 2, ¶ 20, 906 N.W.2d 411, 417, where a pre-trial evidentiary hearing was not conducted. In *Phillips*, the victim of the charged offense and the prior acts were the same person. *Id.* at ¶ 18, 906 N.W.2d at 416. Unlike *Phillips*, this case involves two witnesses who were not the victim in the charged case. Without a pre-trial evidentiary hearing, the circuit court would be unable to perform the proper analysis required to determine if the prior act evidence provided by the two unrelated witnesses is admissible for this case. The circuit court should have held a meaningful hearing to ascertain the relevance of the evidence. Then, the circuit court was required to weigh probative value of this evidence against the prejudicial effect. However, relying only on the State's written filing, the circuit court in this case made a general and non-specific finding on the record that the evidence was relevant and the balancing test was satisfied. JT1 6-7. The circuit

court erred in concluding no hearing was necessary and failing to conduct a meaningful review of the evidence prior to its admission.

B. The circuit court erred in finding the other-acts evidence relevant because the events described were too remote and the proffered purposes were not relevant to the charged offense.

The State in *Lassiter* argued that in the prior offense and the present offense the defendant's motive behind both offenses was that he had been "jilted." 2005 S.D. 8, ¶ 23, 692 N.W.2d at 178. While that may have been true, the prior act evidence in *Lassiter* was inadmissible because "any connection between the two assaults was simply too remote." 2005 S.D. 8, ¶23, 692 N.W.2d at 179. Like *Lassiter*, the prior acts in this case are too remote. Chasinghorse's testimony alleged other acts from 2021 and 2022, while Banks' testimony described events from 2019. JT1 110-116; JT1 118-126. Moreover, there is no relationship between the victims that could allow for the prior act evidence to prove that the defendant had any motive, intent, or common scheme. Therefore, the prior act evidence related to Chasinghorse and Banks only tends to prove that "because defendant had done it before, [s]he must have done it again." *Lassiter*, 2005 S.D. 8, ¶23, 692 N.W.2d at 179. The circuit court did not weigh this factor in its analysis. JT1 6-7. This is exactly the type of evidence which SDCL 19-19-404(b) prohibits. The circuit court erred in inviting the jury to draw this forbidden inference and not considering this in its analysis.

Under SDCL 19-19-401, the evidence of prior acts provided by Chasinghorse and Banks is irrelevant to any material issue in the case. In *State v.*

White, this court held that “[i]f specific intent is an element of an offense, proof of similar acts may be admitted to carry the burden even if the defense to the charge is a complete denial.” 538 N.W.2d 237, 244 (S.D. 1995). However, aggravated assault, the offense charged in this case, is a general intent crime. *State v. St. John*, 2004 S.D. 15, ¶ 13, 675 N.W.2d 426, 428. Evidence of prior acts to show that Thurston had specific intent to commit aggravated assault is irrelevant proving the elements of the offense. Thurston did not dispute a disagreement occurring. Indeed, Thurston agreed the disagreement was about jealousy, which was mutual. JT1 128-131. The issues of motive, intent, or common scheme or plan of domestic abuse were not in the purview of any appropriate consideration of the charged crimes. No disputed fact was “more or less probable” with the other acts evidence, nor was it consequential in determining what took place during the altercation. SDCL 19-19-401. This was propensity evidence, and the circuit court erred in finding the other acts evidence relevant for any other purpose.

C. The probative value of the other acts evidence was substantially outweighed by the unfair prejudice resulting from its admission.

The prejudicial effect of presenting unrelated, irrelevant, and cumulative testimony from Thurston’s prior relationships cannot be overstated. This testimony was highly prejudicial, as the entire purpose of Chasinghorse and Banks’ testimony was to portray Thurston’s character as jealous, vengeful, and domineering. Chasinghorse and Banks provided testimony exclusively to attack Thurston’s character. The circuit court erred in assessing the prejudicial effect by

affording it no weight in its analysis. JT1 6-7. The probative value was inconsequential with regard to the charged conduct. It was especially prejudicial because the jury, in essence, was asked to assess the credibility of Conley's allegations against Thurston's denial. This testimony did not assist the jury in determining motive, intent, or common scheme or plan. Rather, this evidence served merely to vouch for Conley's testimony. Under the circumstances of this case, the circuit court's error in admitting this evidence likely "affected the jury's conclusion." *State v. Nohava*, 2021 S.D. 34, ¶24, 960 N.W.2d 844, 852 (citing *State v. Kvasnicka*, 2013 S.D. 25, ¶19, 829 N.W.2d 123, 128). Therefore, the circuit court erred.

CONCLUSION

The circuit court abused its discretion in overruling Thurston's objection to the other-acts testimony and admitting it in its entirety. For the aforementioned reasons, authorities cited, and upon the settled record, Thurston respectfully asks this Court to vacate the Judgment and Sentence, or in the alternative, remand the case to the circuit court with an Order directing the court to reverse the Judgment and Sentence and schedule a new trial.

REQUEST FOR ORAL ARGUMENT

The attorney for the Appellant, Sheah Thurston, respectfully requests thirty (30) minutes for oral argument.

Respectfully submitted this 29th day of July, 2025.

/s/ Derek D. Frieze

Derek D. Frieze

South Dakota Office of Indigent Legal Services

Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Brief contains 3,716 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2007.

Dated this 29th day of July, 2025.

/s/ Derek D. Fries

Derek D. Fries

South Dakota Office of Indigent Legal Services

Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Brief were electronically served upon:

MARTY JACKLEY
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Attorney for Appellee, State of South Dakota

LARA ROETZEL
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Attorney for Appellee, State of South Dakota

Dated this 29th day of July, 2025.

/s/ Derek D. Friese
Derek D. Friese
Attorney for the South Dakota Office
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Sioux Falls, SD 57109
605-773-5047

APPENDIX

Judgment & Sentence.....	A-1
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STATE OF SOUTH DAKOTA,)
)SS
COUNTY OF PENNINGTON.)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
Plaintiff,)
)
vs.)
)
SHEAH MARIE THURSTON,)
DOB: 9-21-1987)
Defendant.)

File No. CRI24-3547

JUDGMENT

Appearance at sentencing:

Prosecutor: Emma Kalkowski-Farrand Defense attorney: Bryan Andersen

Date of sentence: APRIL 28, 2025
Date of offense: SEPTEMBER 2, 2024
Charge: COUNT 1: AGGRAVATED ASSAULT (DOMESTIC ABUSE)
Class: 3 Felony SDCL: 22-18-1.1(8)
Found guilty at trial: MARCH 21, 2025

Date of sentence: APRIL 28, 2025
Date of offense: SEPTEMBER 2, 2024
Charge: COUNT 2: SIMPLE ASSAULT (DOMESTIC ABUSE)
Class: 1 Misdemeanor SDCL: 22-18-1(5)
Found guilty at trial: MARCH 21, 2025

☒ The Defendant having been found guilty and the Court having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT in COUNT 1 the Defendant is sentenced to serve:
4 YEARS in the South Dakota State Penitentiary with 0 suspended and 41 days credit plus each day served in the Pennington County jail.

- ☒ That Defendant pay court costs of \$116.50.
- ☒ That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11.
- ☒ That Defendant pay prosecution costs: UA \$ __, Drug Test \$ __, Blood \$ __, SART Bill \$ __; Transcript \$39.20.
- ☒ That Defendant pay the statutory fee of \$25.00 DV, and

IT IS HEREBY ORDERED THAT in COUNT 2 the Defendant is sentenced to:
41 days credit for time served.

- ☒ That Defendant pay court costs of \$96.50.

Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.

Attest:
Greenamyre, Kylie
Clerk/Deputy



5/6/2025 12:22:34 PM

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. Hendrickson", written over a horizontal line.

HON. JOSHUA K. HENDRICKSON CIRCUIT JUDGE

You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31089

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

SHEAH MARIE THURSTON,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
7th JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLEE'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL
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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

DID THE TRIAL COURT ABUSE ITS DISCRETION ADMITTING
OTHER ACTS EVIDENCE?

State v. Boe, 2014 SD 29, 847 N.W.2d 315

State v. Evans, 2021 SD 12, 956 N.W.2d 68

The trial court admitted evidence of prior assaults by Thurston against the same and similar victims under similar circumstances.

STATEMENT OF THE CASE AND FACTS

Sheah Thurston assaulted her girlfriend, Tessa Conley, during an argument about alleged infidelity. Thurston and Conley had been dating for a little less than a year prior to the subject assault. TRIAL 1 at 17/2. On September 2, 2024, after picking up her son from the boy's father, Howard Harrison, Conley returned to Thurston's home. Thurston was in the driveway and got into the passenger seat of Conley's vehicle and accused her of having an affair with Harrison. Conley denied the accusation and called Harrison on her cell phone so he could tell Thurston that there was nothing going on between Conley and him. TRIAL 1 at 21/7.

Thurston lunged for Conley's phone, which got knocked into the space between Conley's seat and the driver's side door. TRIAL 1 at 21/12. When Conley tried to retrieve her phone, Thurston wrapped the seat belt around her neck and tried to grab the phone herself. TRIAL 1 at

23/11, 51/18. Conley was screaming and telling Thurston to stop. TRIAL 1 at 51/19. Harrison was on the other end of the phone line the entire time and heard Thurston and Conley fighting and Conley screaming "Please, Sheah, stop hitting me." TRIAL 1 at 56/24, 57/6. During the struggle, Thurston bit Conley's right forearm and scratched her leg. TRIAL 1 at 23/12. Conley unbuckled her safety belt, picked up her phone and went into the house, leaving her son in his child seat in the back seat of the car for the time being.

Inside the house, Thurston approached Conley from behind and placed her in a chokehold. TRIAL 1 at 24/16. Thurston, who is "a lot bigger than" Conley, tried to pull Conley to the ground but Conley was "afraid of falling" because Thurston "would really have the power to take me out in a chokehold." TRIAL 1 at 24/23. Conley tried to remain on her feet but she "started kinda going in and out" and believed she "was gonna die in that moment." TRIAL 1 at 24/25.

Thurston threw Conley face down onto the floor and put her knee into her back to keep her down. TRIAL 1 at 25/13. Thurston was screaming and grabbed Conley's phone from her hand. TRIAL 1 at 25/17. Thurston hit Conley in the forehead with the phone and then grabbed her hair and pounded her head on the floor. TRIAL 1 at 25/17. Conley started bleeding heavily from a gash in her forehead caused by being struck with her cell phone. TRIAL 1 at 25/21.

After the assault, Conley's leg was scratched and bruised, she had a bruise on her bicep from where Thurston bit her, she had staples in her scalp from the gash caused by the cell phone, she had lost a chunk of her hair, she had a large bruise on her arm from being thrown to the floor, she had red marks around her neck, and she was sore and hoarse from being choked. TRIAL 1 at 31/13, 101/21, 149/13; EXHIBIT 5, 6, 7, 8A-12B.

Thurston was charged and convicted of aggravated assault for choking Conley and simple assault in for hitting Conley's forehead with the cell phone. Thurston now appeals.

ARGUMENT

Thurston argues that the trial court erred in admitting evidence of prior assaultive acts she committed against the same and similar victims under similar circumstances all within four years of the instant offense.

The first prior acts were earlier assaults on Conley in May and August of 2024. Again, the assaults were precipitated by Thurston's accusation that Conley was involved with Harrison. TRIAL 1 at 41/2. In May, Thurston grabbed Conley around the neck strangling her and dug her fingernails into Conley's side. Thurston punched Conley in the face. Conley wound up with a black eye and bruises and scratches on her face and neck. TRIAL 1 at 41/23. In August, Thurston shoved Conley against the wall with her arm on her neck so she could not breathe or speak. TRIAL 1 at 45/19. Also in August, Thurston grabbed Conley by

her shirt and locked her head between her thighs and started punching her back. TRIAL 1 at 47/14-48/3.

The second prior acts were assaults on another girlfriend, Evelyn Chasinghorse, in June and July of 2022 and August of 2023. The assaults were precipitated by Thurston's jealousy. TRIAL 1 at 111/16, 112/2, 113/3, 117/13. In June, Thurston put both hands around Chasinghorse's throat and pushed her against the refrigerator and cut off her breathing until Chasinghorse passed out. TRIAL 1 at 112/6. In July Thurston threw Chasinghorse to the floor and pinned her down. TRIAL 1 at 113/11. Thurston then burned Chasinghorse's stomach with a lit cigarette. TRIAL 1 at 113/6-18. Chasinghorse was screaming and attempting to crawl away when Thurston grabbed her by her shirt collar and shoved dog feces into her mouth. TRIAL 1 at 115/10. In August of 2023, Thurston pinned Chasinghorse to the bed with a knife to her throat demanding to know if Chasinghorse had cheated on her. TRIAL 1 at 116/11.

The third prior act was an assault on another girlfriend, Indago Banks, in August 2020. RECORD at 100. Again, the assault was precipitated by Thurston accusing Banks of being involved with a man with whom she had corresponded back in 2015. TRIAL 1 at 121/23, 123/20. Thurston grabbed Banks by the throat and pinned her to the ground. TRIAL 1 at 124/24, 126/9.

A. Standards And Precedents

Review of evidentiary questions is limited to whether the trial court abused its discretion. *State v. Birdshead*, 2015 SD 77, ¶ 50, 871 N.W.2d 62, 80. While evidence of other acts offered for the sole purpose of establishing a propensity to commit a crime is irrelevant and inadmissible, to obtain a new trial a defendant must prove not only that the trial court abused its discretion in admitting the evidence but also that she was prejudiced as a result. *Birdshead*, 2015 SD 77, ¶ 64, 871 N.W.2d at 83. “The other acts rule is one of ‘inclusion, not exclusion.’” *State v. Huber*, 2010 SD 63, ¶ 56, 789 N.W.2d 283, 301. The question on review “is not whether, had [this court] been the trial judge, would [it] have admitted the prior . . . acts evidence but whether the trial court sitting in the case abused its discretion by doing so.” *Huber*, 2010 SD 63 at ¶ 56, 789 N.W.2d at 301. But, as this court has found, prior assaults of intimate partners precipitated by an assailant’s assertion of control over a victim are “highly relevant” to questions of common scheme, motive and intent in the domestic violence context. *Huber*, 2010 SD 63 at ¶ 57, 789 N.W.2d at 301.

For example, in *State v. Boe*, 2014 SD 29, 847 N.W.2d 315 (2014), a defendant challenged admission of evidence of a ten-year-old assault on a prior girlfriend in his trial for aggravated assault of his latest girlfriend. Boe perpetrated the first assault in 2002 by striking his girlfriend in the head with an unloaded gun because she wanted to leave

a party when he wanted to stay. *Boe*, 2014 SD 29 at ¶ 15. The second assault occurred in 2012 when Boe “accidentally” blew the passenger window out of his latest girlfriend’s vehicle with a shotgun because he was “effing mad” that she would not leave a property where he was partying with friends. *Boe*, 2014 SD 29 at ¶ 15. Though the two assaults involved different victims, *Boe* ruled that evidence of the first was admissible in Boe’s trial on the second because both incidents involved assaults on “a female victim in a relationship with Boe and a victim who was not complying with Boe’s wishes.” *Boe*, 2014 SD 29 at ¶ 23. Thus, Boe’s first “act of assaulting a girlfriend with a gun when he was angered with her was relevant to prove the material fact that Boe had the motive and intent to harm [his latest girlfriend] with the shotgun.” *Boe*, 2014 SD 29 at ¶ 22; *State v. Owens*, 2002 SD 42, 643 N.W.2d 735 (defendant’s earlier assault on girlfriend admissible in trial for murder of a different girl to negate defense of lack of intent).

Likewise, in *State v. Evans*, 2021 SD 12, 956 N.W.2d 68, this court affirmed the admission of evidence of a defendant’s prior assault on his estranged wife in 1993 during his prosecution for an assault on his girlfriend in 2017. In the assault on his wife, Evans entered her home at night with a gun while she was sleeping, woke her up, shoved a blanket into her mouth and a pillow over her face and attempted to rape her. *Evans*, 2021 SD at ¶ 27. In the assault on his girlfriend, Evans’ girlfriend awoke to the sound of Evans’ voice beside her in bed. Evans taped her

mouth and hands with duct tape and raped her. *Evans*, 2021 SD at ¶8. The *Evans* court ruled that the trial court had properly admitted the prior assault evidence because the wife and the girlfriend were “members of the same class of victims – women who suffered domestic abuse at the hands of Evans” and that Evans’ assault on his wife “evinced the same motive that impelled him to commit the charged crimes against [his girlfriend] – to exert power and instill fear in an attempt to regain control of a relationship, and if that failed, to punish each woman for ending it.” *Evans*, 2021 SD at ¶¶32, 33. Applying these standards and precedents, the trial court did not err in admitting the evidence of Thurston’s prior assaults on Conley and other former girlfriends.

B. The Trial Court Properly Admitted The Other Acts Evidence

Thurston complains that admission of the evidence of her other assaults was error because (1) the trial court allegedly failed to conduct a proper balancing test, (2) the other acts were not relevant and/or were remote, and (3) the other acts were unduly prejudicial. None of these grounds provide a basis for relief.

1. Balancing Test

Admission of other acts evidence must satisfy a two-part test: (1) the evidence must be relevant to an issue other than character and (2) its probative value must not be substantially outweighed by the danger of unfair prejudice. *Boe*, 2014 SD 29 at ¶21. The record reflects that the court received detailed briefing on both the law and the factual basis for

all of the prior acts evidence, supported by law enforcement reports and proffers of evidence within the briefing itself. RECORD at 83-108.

Thurston filed a brief opposing the admission of the prior acts evidence. RECORD at 112-119.

At the outset of the trial, the trial court referenced its review of this comprehensive briefing and conducted the required analysis. TRIAL 1 at 6/16. The court found that the prior acts involved “similar victims, similar acts showing common scheme, motive or intent.” TRIAL 1 at 6/19; *Evans*, 2021 SD 12 at ¶ 29 (affirming admission of prior acts involving “a similar victim, namely someone involved in a romantic relationship with [the defendant], who was subjected to threatening and harassing behavior . . . after taking steps to end the relationship”). The court also found that “the probative value outweigh[ed] the potential prejudice.” TRIAL 1 at 6/21; *Evans*, 2021 SD 12 at ¶ 29. As discussed in reference to Thurston’s further arguments below, these findings are supported by both the evidence in the state’s proffer and the trial record.

Though Thurston complains that the trial court failed to hold an evidentiary hearing prior to admitting the other acts evidence, Thurston cites no authority for the proposition that an evidentiary hearing is required. All that is required is that a court be satisfied that the evidence is sufficient for a jury to find by a preponderance of the evidence that the other acts occurred and that the defendant was the perpetrator. *State v. Phillips*, 2018 SD 2, ¶ 20, 906 N.W.2d 411, 417.

The only prerequisite to admissibility is for the state to proffer sufficient evidence for the court to make this determination, which the state amply did in its motion and attached police reports. RECORD at 83-108; TRIAL 1 at 6/25. Indeed, Thurston's opposition brief did not even deny that the prior acts assaults had occurred, nor did she challenge Chasinghorse's or Banks' testimony at trial. TRIAL 1 at 117/18, 126/22.

2. Relevance And Remoteness

According to Thurston, the prior acts evidence was not relevant or, if it was, it was too remote. Aggravated assault as applied to Thurston required proof that she had "attempt[ed] to induce a fear of death or imminent serious bodily harm by impeding normal breathing or circulation of the blood of another person by applying pressure on the throat or neck." SDCL 22-18-1.1. Simple assault as applied to Thurston required proof that she "[i]ntentionally caus[ed] bodily injury to another which does not result in serious bodily injury." SDCL 22-18-1. Though both are general intent crimes, proof of each claim required an intent to commit the act of the crime itself, *e.g.* to apply pressure to the neck to impede breathing and/or blood flow and to cause minor bodily injury. *Boe*, 2014 SD 29 at ¶ 28. Because intent is still in issue even in general intent crimes, *Boe* found that other acts evidence could be admitted to prove the general intent element of aggravated assault. *Boe*, 2014 SD 29 at ¶ 28; *Phillips*, 2018 SD 2 at ¶ 9 (prior acts of abuse admitted to prove husband's aggravated assault (domestic) and simple assault of wife).

As in *Boe*, the other acts evidence here was relevant to Thurston's general intent to commit the acts of the crime itself. "By showing that the earlier [assaults on Chasinghorse and Banks] bore a singular strong resemblance to the pattern of the offense charged, the government establishes a preexisting plan or design which, in turn, tends to show the doing of the act designed." *State v. Ondricek*, 535 N.W.2d 872, 875 (S.D. 1995).

Though the other acts and the charged offense "need not be identical," here they are. *State v. Lassiter*, 2005 SD 8, ¶ 16, 692 N.W.2d 171, 176. Each of the incidents involving Chasinghorse and Banks was precipitated by a fit of jealousy on the part of Thurston and she reacted to each in the same way – by grabbing each victim by the throat to incapacitate their breathing and pin them into a position that allowed her to inflict further bodily injury. *Boe*, 2014 SD 29 at ¶ 23. Each of the incidents involving Chasinghorse and Banks was committed "to exert power and instill fear in an attempt to regain control of a relationship" or "to punish each woman for ending it." *Evans*, 2021 SD 12 at ¶ 33. The evidence of these prior similar assaults was thus relevant to and probative of Thurston's motive and intent to assault and injure Conley in the same way and for the same reason. *Boe*, 2014 SD 29 at ¶ 21; *Phillips*, 2018 SD 2 at ¶¶ 15, 18 (prior acts showed a hostile and controlling relationship that was fueled by husband's suspicions of wife's

relationships with other men which evidenced husband's motive to assault wife).

Thurston's irrelevance argument relies on *Lassiter* but that case is readily distinguishable from this case. *Lassiter* found that the other act and charged offense victims were not similar because Lassiter had no direct relationship with the victim of the charged offense; here Thurston had a direct, romantic relationship with all three victims. *Lassiter*, 2005 SD 8 at ¶ 25, 692 N.W.2d at 179. Also, in *Lassiter* the circumstances of the other act and charged offense crimes were not similar; in the latter Lassiter broke into his victim's house with the intent to commit assault, but in the former Lassiter and his victim had been sitting in a car together when the situation escalated into an assault. *Lassiter*, 2005 SD 8 at ¶¶ 11, 18, 692 N.W.2d at 175, 177. Here both the other acts and charged offense crimes were virtually identical.

Thurston further complains that the prior acts were too remote. However, this court has "steadfastly refused to adopt an inflexible rule on remoteness." *Evans*, 2021 SD 12 at ¶ 34. A "prior bad act, despite its remoteness, may still be relevant if it is strikingly similar to the charged offense. Conversely, less similarity may be required where the prior act is closer in time to the charged incident." *Evans*, 2021 SD 12 at ¶ 34. Here, the prior acts suffer from neither temporal remoteness nor dissimilarity. All the prior acts occurred within one to four years of the charged offense and were "strikingly similar" to the charged offense in

both the conduct involved and the circumstances which precipitated it. *Evans*, 2021 SD 12 at ¶ 34. As this court found in *Boe*, where, as here, there is sufficient similarity, not even a period of ten years between the prior act and charged offense is too remote. *Boe*, 2014 SD 29 at ¶ 24. Likewise, in *Evans* this court found that the defendant's abuse of his wife 27 years prior to similar abuse of his girlfriend was not too remote to be probative of motive. *Evans*, 2021 SD 12 at ¶ 34. Accordingly, the trial court here did not abuse its discretion in admitting the other act evidence.

3. Prejudice

Thurston complains that the probative value of the prior acts evidence was outweighed by its prejudicial effect. "Prejudice does not mean the damage to [a defendant's] case that results from the legitimate probative force of the evidence; rather, it refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *Ondricek*, 535 N.W.2d at 877; *Boe*, 2014 SD 29 at ¶ 24. Prior acts evidence is particularly probative in the domestic context where "a jury may be unable or unwilling to accept that a single instance of abuse occurred without context to explain an isolated incident." *Phillips*, 2018 SD 2 at ¶ 19.

Here the other acts testimony had substantial, legitimate probative value to establish the motive and intent to commit the acts charged¹ and

to rebut Thurston’s wholesale denial that she placed Conley in a chokehold. TRIAL 1 at 137/16. “[E]vidence of a common plan or scheme to achieve the act [wa]s directly relevant to refute [Thurston’s] general denial.” *Ondricek*, 535 N.W.2d at 875.

Moreover, the court alleviated the potential for unfair prejudice by giving a limiting instruction *before* the jury heard the prior acts testimony. TRIAL 1 at 107/21; *Evans*, 2021 SD 12 at ¶36. The court instructed the jury that it could use such evidence “only to show motive, intent, or a common scheme or plan of domestic abuse” and that the jury could “not consider it as tending to show in any other respect the defendant’s guilt.” TRIAL 1 at 107/22. “[W]hen other act evidence has been correctly admitted, a limiting instruction . . . ‘fully protects a

¹ Commentators and a member of this court have observed that the introduction of other acts evidence in relation to general intent crimes is discouraged only when “intent is readily inferred from the act itself . . . or there is no dispute on intent.” *Ondricek*, 535 N.W.2d at 878 (Sabers, J. dissenting), citing 1 MUELLER & KIRKPATRICK, *Federal Evidence* § 112 at 648 (2nd Ed. 1994). Thus, for example, *United States v. Manganellis*, 864 F.2d 528, 542 (7th Cir. 1988), found that evidence of defendant’s prior sales of cocaine should not have been admitted to prove intent to distribute with respect to the charged offense of a sale to an undercover officer; the intent to distribute could readily be inferred from the act of the sale itself. Here, intent is not readily inferred from the conduct in question because Thurston could have grabbed Conley by the neck with or without the intent to apply pressure to restrict her air or blood flow, or could have grabbed Conley’s phone away with or without the intent to injure her head. Thus, evidence of Thurston’s common scheme and plan of choking her romantic partners as a predicate to inflicting further bodily injury was directly relevant to proving that she committed each act with the requisite intent for aggravated and simple assault in this case.

defendant's rights.” *Evans*, 2021 SD 12 at ¶37. Thurston experienced no unfair prejudice from the admission of the prior act testimony.

CONCLUSION

The subject assaults are practically textbook examples of admissible prior acts evidence – the victims and circumstances are strikingly similar, the prior acts showed a common plan to physically assault her romantic partners for suspected infidelity and to incapacitate them through asphyxiation as a predicate for the infliction of further bodily injury, they were directly relevant to motive and intent in light of Thurston’s general denial of even committing the charged acts, they were temporally recent to the charged offenses, and they did not tend to persuade the jury by any illegitimate means. Accordingly, this court can comfortably affirm the trial court’s admission of the subject prior acts evidence and affirm Thurston’s convictions.

Dated this 3rd day of September 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 4,040 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this 3rd day of September 2025.

Paul S. Swedlund
Paul S. Swedlund
SOLICITOR GENERAL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing brief was served on Derek D. Friese via Odyssey file and serve at derek.friese@state.sd.us.

Dated this 3rd day of September 2025.

Paul S. Swedlund
Paul S. Swedlund
SOLICITOR GENERAL

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31089

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

vs.

SHEAH MARIE THURSTON,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE JOSHUA HENDRICKSON
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

No. 31089

vs.

SHEAH MARIE THURSTON,

Defendant and Appellant.

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Sheah Thurston, will limit discussion to the issues that need further development or argument. Any matter raised in Thurston's initial brief, but not specifically mentioned herein, is not intended to be waived. Thurston will attempt to avoid revisiting matters adequately addressed in the initial brief.

The brief of Plaintiff and Appellee, the State of South Dakota, is referred to as "SB." All citations will be followed by the appropriate page number. Thurston relies upon the Jurisdictional Statement, Statement of the Case and Facts, and Statement of Legal Issue presented in her initial brief, filed with the Court on July 29, 2025.

ARGUMENT

I. THE CIRCUIT COURT ABUSED ITS DISCRETION IN ADMITTING OTHER-ACTS EVIDENCE.

A. The circuit court abused its discretion in conducting a cursory balancing-test and declining to hold a hearing prior to admitting the other-acts testimony.

The State suggests that an evidentiary hearing is not required prior to the admission of other acts evidence. SB 7-9. Thurston does not contend that error occurs in every instance where a trial court fails to hold a separate evidentiary hearing. While a hearing is not necessarily *required*, Thurtson argues that, in this case, the circuit court's error lies in the dearth of pre-admission analysis. The absence of any evidentiary hearing is a substantial factor this Court should consider in determining whether the circuit court adequately analyzed the evidence in dispute.

Because this evidence is admitted under an exception to the general rule, inquiry into its admissibility requires "meaningful analysis." *State v. Steele*, 510 N.W.2d 661, 668 (S.D. 1994). The circuit court's examination on the record was cursory. JT1 6-7. Although the State notes the circuit court referenced its review of the briefing, SB 7-9, the circuit court did not make the required preliminary determination that the prior acts actually occurred. SB 8 (citing *State v. Phillips*, 2018 S.D. 2, ¶ 20, 906 N.W.2d 411, 417).

The circuit court, as in *Phillips*, did not make such a finding on the record. JT1 6-7. See *Phillips*, 2018 S.D. 2, ¶ 21, 906 N.W.2d at 417. This is another consideration that demonstrates the circuit court's inadequate analysis. In

Phillips, this Court rejected appellant’s argument that failure to make a preponderance finding was error. *Id.* However, the appellant in *Phillips* had not challenged the evidence properly and no prejudice was established. *Id.* Here, Thurston has preserved the challenge and will establish prejudice below. The circuit court’s acceptance of the proffered facts in this case, without findings or analysis, was superficial. Like *State v. Chapin*, where this Court found an abuse of discretion in admitting evidence of prior bad acts without first conducting meaningful review, this record contains no substantive analysis. 460 N.W.2d 420, 422-23 (S.D. 1990). The circuit court neither made a preliminary determination as to the veracity of claims, nor heard the testimony prior to admission. The circuit court’s announcement of admissibility contained no substantive reasoning. It simply recited the standard of review without applying it. The circuit court committed reversible error in this conclusory analysis.

- B. The circuit court erred in finding the other-acts evidence relevant because the events described were too remote and the proffered purposes were not relevant to the charged offense.

Thurston agrees with the State that there is not an “inflexible rule on remoteness.” SB 11 (citing *State v. Evans*, 2021 S.D. 12, ¶ 34, 956 N.W.2d 68, 82). The appellant does not suggest a specific timeframe for what constitutes inadmissibly remote evidence. Instead, Thurston argues that the remoteness of this evidence, which allegedly occurred years prior, was a factor the circuit court improperly ignored. The temporal distance between other-acts and charged crimes is necessary to evaluate the proffered other-acts evidence. Remoteness

must be considered in relation to similarity. *Evans*, 2021 S.D. 12, ¶ 34, 956 N.W.2d at 82 (citing *State v. Most*, 2012 S.D. 46, ¶ 17, 815 N.W.2d 560, 565).

Here, the alleged prior incidents involved different people at different times and merely served to advance the State's trial theory that Thurston was a jealous and violent individual. This propensity evidence is prohibited under SDCL 19-19-404(b). *State v. Lassiter*, 2005 S.D. 8, ¶¶ 23-24, 692 N.W.2d 171, 179. Likewise, the other-acts evidence did not make Conley's accusations more or less probable. SDCL 19-19-401. Because the evidence was remote, dissimilar, and used for propensity value, the circuit court erred in admitting it.

C. *The probative value of the other acts evidence was substantially outweighed by the unfair prejudice resulting from its admission.*

Thurston disagrees with the State's claim that she "experienced no unfair prejudice" in her trial. SB 14. The State, using the other-acts evidence, was permitted to argue that Thurston was "insecure" as a romantic partner and that this trait established guilt. JT2 185. The State relied upon this description of Thurston's character in its closing remarks during its initial argument. *Id.* at 185-86. This evidence and the resulting implications are highly prejudicial, inviting the jury to conclude that, since there were other instances, Thurston "must have done it again." *Lassiter*, 2005 S.D. 8, ¶¶ 23-24, 692 N.W.2d at 179. The level of prejudice is severe in this case because the jury was tasked with crediting either Conley's accusations or Thurston's denials. The testimony from Banks and Chasinghorse improperly bolstered Conley's testimony. This impermissible

inference, that Thurston was “insecure,” and vengeful, invited a verdict based on character evidence. JT2 185. The other-acts evidence was offered to attack Thurston’s character, and the unfair prejudice substantially outweighed the probative value. The circuit court erred in allowing its admission.

CONCLUSION

For the aforementioned reasons, authorities cited, and upon the settled record, Thurston respectfully asks this Court to vacate the Judgment and Sentence, or in the alternative, remand the case to the circuit court with an Order directing the court to reverse the Judgment and Sentence and schedule a new trial.

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12-point type. Appellant's Reply Brief contains 981 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2007.

Dated this 3rd day of October, 2025.

/s/ Derek D. Fries

Derek D. Fries

South Dakota Office of Indigent Legal Services

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Reply Brief were electronically served upon:

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