

Judgment rendered August 26, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 57,029-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA Appellee

versus

BRANDON WAYNE LINDSEY Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 394,124

Honorable Christopher T. Victory, Judge

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LOUISIANA APPEALS AND WRIT SERVICE Counsel for Appellant
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Before STONE, HUNTER, and MARCOTTE, JJ.

STONE, J.

This appeal arises from the First Judicial District Court, the Honorable Chris Victory presiding. A jury found Brandon Lindsey (the “defendant”) guilty of the second degree murder of Heaven Weed (“Heaven”) and he was sentenced to imprisonment for life. The defendant appeals his conviction, arguing that the trial court erred in allowing introduction of propensity evidence, and that such was not a harmless error. For the reasons stated herein, we affirm the defendant’s conviction and sentence.

Facts and procedural history

The defendant, Brandon Lindsey, lived with his girlfriend/murder victim, Heaven. On the night of March 1, 2023, they went to the Sand Bar in downtown Shreveport and had a conflict that “was becoming physical” according to security staff who made them leave and further banned them for 48 hours. The couple returned to Heaven’s house (the crime scene). By the next day, Heaven’s mother, Chasity Weed (“Chasity”), became concerned when Heaven did not answer her phone or return her calls within usual timing. Chasity went to Heaven’s house to check on her. She testified that when she arrived, the defendant told her, with a “carefree” demeanor, that Heaven was “messed up.” The mother found her daughter in bed, unconscious and wrapped in a blanket with her entire face swollen and blood coming out of her mouth. Chasity took her daughter to the hospital where she was put on life support. The defendant did not accompany them. Eight days later, Heaven was pronounced braindead and taken off life support. The coroner ruled Heaven’s death a homicide and found that the cause of death was closed-head trauma resulting in a brain hemorrhage. Heaven also

had two broken ribs and what appeared to have been an abrasion on her neck from a garrote, in addition to bruises all over her body. She also had dirt and leaves in her hair.

The crime scene investigation revealed an attempted cover-up. The interior of the house had a strong odor of bleach. Blood spatters were found in multiple places throughout the house. There were bloody clothes near the washing machine and the in the trashcan. Heaven's blood was found on the defendant's jeans, boxer briefs, and shirt. Inside the washing machine, police found a pillow with Heaven's blood on it, and a washcloth with her blood on the floor of her bedroom. The clothes that the defendant wore on March 1, 2023, at the Sand Bar were covered in Heaven's blood. The defendant's DNA was found mixed with Heaven's blood on defendant's grey shirt.

The defendant's hands were swollen and bruised when they were photographed on March 3, 2023. He blamed this on blocking a punch that Heaven's recent ex-boyfriend, Stephen Morgan, had thrown at his head four days earlier.¹ Per its internal GPS records, his work truck was parked at Heaven's house from 7:48 P.M. on March 1, 2023, to 11:07 A.M. on March 2, 2023. At that latter time, he drove to work but returned to Heaven's residence less than an hour later, having been excused from work after claiming he was "sick." He arrived back at Heaven's house at 11:55 A.M. and stayed until 8:00 P.M. (on March 2, 2023). His cellphone location coincided with the truck's location that entire time. He lied to the police, first claiming that he had gone back to Heaven's residence after being

¹ Morgan was called as a witness by the prosecution.

ejected from the Sand Bar, then to work around 8:00 A.M. the next morning, and did not return to her residence until that afternoon. However, when confronted with his truck's GPS information, the defendant claimed that he dropped off the truck at Heaven's house then went to his residence on his motorcycle, then to work. His cellphone and truck location records contradict this explanation.

Pursuant to La. C.E. art. 412.4, the prosecution introduced the testimony of the defendant's ex-girlfriend, Haley Hudson ("Ms. Hudson"), whom he was with intermittently for seven years and shared a daughter. She reported that initially, things were great between them, but later — on multiple occasions — the defendant brutally battered her. She acutely associated his consumption of drugs and alcohol with his violence.

Throughout the course of domestic beatings, Ms. Hudson's injuries included fractured facial bones, broken ribs, knocked-out teeth, a broken jaw, and chronic seizures from head trauma. The defendant repeatedly gave Ms. Hudson black eyes while she was pregnant. She reported that, to conceal what the defendant was doing to her, she lied to her boss about why she was frequently going to work with black eyes and other facial bruises. Ms. Hudson's boss, however, was not deceived and eventually terminated her employment once the defendant started showing up at the workplace.

On one occasion, the defendant dragged Ms. Hudson around the house by the hair while their child was watching and crying. This left her with a permanent bald spot where the defendant ripped out her hair. She sought refuge in her parents' house in flight from this particular beating. Once inside her parents' home, with her face covered in bruises and blood and blood on her clothing, she locked the door, warned them "he's outside," as

she asked them to call 9-1-1. The defendant followed her there and went inside their house unwelcome. She had her first seizure in the hospital later that day.

The defendant went to jail multiple times for these crimes, and Ms. Hudson reported that the only time she got a reprieve from the defendant beating her was while the defendant was in jail. She also reported that the defendant gaslighted her into thinking she was the problem, told people that she was crazy (as a way of discrediting her), and that he got angry when denied “control.” Ms. Hudson cried throughout most of her testimony. This seven-year period began in 2010. It ended when defendant got a 4-year sentence for the abovementioned unauthorized entry.

Pursuant to the La. C.E. art. 403 balance test, the defense unsuccessfully objected at the *Prieur* hearing, arguing that the unfair prejudicial effect of the evidence substantially outweighed its probative value. However, trial counsel neither asked for cautionary instructions when this evidence was introduced at trial, nor in the jury charge at the end of the trial. Likewise, the defendant’s trial counsel did not cross-examine Ms. Hudson.

In the closing argument, the prosecution argued that what the defendant did to Ms. Hudson, he did to Heaven in killing her. The defense made no contemporaneous objection, despite its contention on appeal that this use of the La. C.E. art. 412.4 evidence (particularly Ms. Hudson’s testimony) varied from the use for which the trial court allowed it to be admitted.

Assignment of error

The defense asserts that (1) the trial court erred in admitting the La. C.E. art. 412.4 evidence; and (2) that such was not a harmless error, especially given the lack of cautionary instructions, prosecution's use of the evidence in closing argument, and the time gap between the offenses against Ms. Hudson and the present offense.

Arguments

Defense. The defense argues, without citing any jurisprudential authority, that the La. C.E. art. 404(B)(1)(a) prohibition on propensity evidence remains operative even when the evidence would meet the elements of La. C.E. art. 412.4. From that premise, the defense argues that whatever permissible use of the evidence that may remain after applying art. 404(B)(1)(a) is nonetheless excluded pursuant to La. C.E. art. 403.

The defense also makes a few subsidiary arguments, namely that (1) because this supposed error has constitutional ramifications, it is subject to de novo review, not abuse of discretion review, citing *Chapman v. California*, 386 U.S. 18, 20, 87 S. Ct. 824, 826 (1967),² and, regardless, this was an abuse of discretion; and (2) the right to raise on appeal the issues of lack of cautionary instructions and allegedly improper closing argument is preserved notwithstanding trial counsel's failure to contemporaneously request cautionary instructions or object, citing *State v. Prieur*, and the error patent rule.

² This case does not support the defendant's appeal. It holds that a violation of the defendant's federal constitutional rights in a criminal case must be proved "harmless beyond a reasonable doubt" for a conviction to avoid reversal on that ground.

Prosecution. The state argues that La. C.E. art. 412.4 is an exception to La. C.E. art. 404(B)(1)(a) exclusion of propensity evidence, and that the defendant's domestic violence history is of "stratospheric" probative value as propensity evidence, and that the legislation would be internally contradictory if La. C.E. art. 412.4 evidence were per se unfairly prejudicial.

Law

Evidentiary rulings are reviewed for abuse of discretion. *State v. Bradley*, 53,550 (La. App. 2 Cir. 11/18/20), 307 So. 3d 369.

"Second degree murder is the killing of a human being...[w]hen the offender has a specific intent to kill *or to inflict great bodily harm*." La. R.S. 14:30.1(A)(1). "Specific criminal intent is that state of mind which exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act or failure to act. Intent may be inferred from the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the finder of fact." *State v. Govan*, 593 So. 2d 833, 835 (La. App. 4 Cir. 1992), *writ denied*, 600 So. 2d 654 (La. 1992).

Specific intent *to kill* is unnecessary for second degree murder. It is sufficient for second degree murder that the defendant has the specific intent to cause great bodily harm. The courts of this state have repeatedly found that unarmed beatings are sufficient evidence of intent to cause great bodily harm. *State v. Daigle*, 440 So. 2d 230, 232 (La. App. 3 Cir. 1983), *writ denied*, 444 So. 2d 123 (La. 1984); *State v. Terrick*, 03-515 (La. App. 5 Cir. 9/30/03), 857 So. 2d 1153, 1156, *writ denied*, 03-3272 (La. 3/26/04), 871 So. 2d 346; *State v. Buchanon*, 95-0625 (La. App. 1 Cir. 5/10/96), 673 So. 2d 663, 666, *writ denied*, 96-1411 (La. 12/6/96), 684 So. 2d 923; *State v. Govan*, *supra*.

“‘*Relevant evidence*’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” La. C.E. art. 401. (Emphasis added.) “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Louisiana, this Code of Evidence, or other legislation. Evidence which is not relevant is not admissible.” La. C.E. art. 402.

La. C.E. art. 403 establishes a balancing test by which relevant evidence may be excluded:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of *unfair prejudice*, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. (Emphasis added.)

“The term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief v. United States*, 519 U.S. 172, 180, 117 S. Ct. 644, 650, 136 L. Ed. 2d 574 (1997). The Louisiana Supreme Court quoted this language with approval in *State v. Rose*, 06-0402 (La. 2/22/07), 949 So. 2d 1236, 1243. Thus, propensity evidence, by definition, is unfairly prejudicial because it is not “proof specific to the offense charged.”

In accordance with that recognition, La. C.E. art. 404(B)(1)(a) states: “*evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith.*” It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of

mistake or accident.” (Emphasis added.) “Even when the other crimes evidence is offered for a purpose allowed under art. 404(B)(1), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant’s defense.” *State v. Rose, supra*.

However, this rule of La. C.E. art. 404(B)(1)(a) categorically excluding propensity evidence has been made subject to exceptions “as otherwise provided by law.” *Id.* Enacted in 2016, La. C.E. art. 412.4(A) does just that. In relevant part, it states:

When an accused is charged with a crime involving abusive behavior against a...household member, or dating partner...evidence of the accused’s commission of another crime, wrong, or act involving assaultive behavior against a...household member, or dating partner...*may be admissible and may be considered for its bearing on any matter to which it is relevant*, subject to the balancing test provided in Article 403. (Emphasis added.)

The appellate courts of this state have recognized that La. C.E. art. 412.4 comes within the exceptions to the general prohibition of La. C.E. art. 404(B):

La. C.E. art. 412.4 is intended to be an exception to La. C.E. art. 404(B)(1)...La. C.E. art. 412.4 permits the admission of other incidents of domestic abuse for *any relevant purpose including the defendant’s character and his acts in conformity therewith, subject only to the balancing test established by La. C.E. art. 403. Simmons*, 332 So.3d at 162; *Jones*, 346 So.3d at 345; *Porter*, 279 So.3d at 1021. (Emphasis in original.)

State v. Breaux, 22-581 (La. App. 5 Cir. 5/10/23), 366 So. 3d 727, 736. The permissive language of La. C.E. art. 412.4(A) (i.e., “may be admissible”) has two important effects: (1) removes the prophylaxis of La. C.E. art. 404(B)(1)(a); and (2) allows La. C.E. art. 403 to retain its full force. It does not create a presumption of admissibility.

State v. Rose, supra, was decided before La. C.E. 412.4 was enacted; La. C.E. arts. 404(B) and 403 were the governing rules. The trial court admitted prior crimes evidence as *modus operandi* tending to prove the defendant's identity as the perpetrator. The Louisiana Supreme Court affirmed, holding that, in the prosecution for the second degree murder of the defendant's second wife (committed November 2003), the trial court did not abuse its discretion in admitting evidence of the defendant's (1) prior conviction of manslaughter in the homicide of his first wife (committed November 1991); (2) his earlier conviction of aggravated assault with a firearm against his first wife (convicted 1990) wherein he claimed she brandished a gun first, whereupon he opened fire on her; and (3) his prior arrest for domestic battery of his second wife (August 2003), wherein he struck her and left bruises on her face. The court held that the strong similarity between the offenses tended to prove via *modus operandi* the identity of the defendant as the perpetrator, i.e., his pattern of murdering his partially estranged wives amid conflict and anger. He killed his first wife by stabbing her (and claimed self-defense), while the second wife was strangled. Both homicides occurred inside the defendant's home and were presaged by earlier criminally violent episodes and argument with the victim the day of the homicide. After both homicides and the domestic battery, the defendant fled authorities, but then reversed course and surrendered to the police. This case is noteworthy because it considered this *modus operandi*/identity purpose for the evidence as, somehow, distinct from a propensity purpose, and because it was decided before La. C.E. art. 412.4 was enacted. While *State v. Rose, supra*, may arguably have mischaracterized propensity evidence (inadmissible at that time) as evidence

of modus operandi (potentially admissible then), it does teach a clear point of wisdom: a finding of *unfair* prejudice substantially outweighing probative value may be difficult indeed where the alleged prior conduct is substantiated by a conviction. Such satisfactorily mutes the risk that unreliable, unproven, unadjudicated, or theretofore unreported prior acts will lure the jury into a guilty verdict.

Analysis

The defense’s legal argument that the general prohibition of La. C.E. art. 404(B)(1)(a) is applicable to La. C.E. art. 412.4 evidence, if accepted, would nullify the deference clause in the former and the entirety of the latter. *State v. Breaux, supra*, is persuasive indeed. We reject this legal argument by the defense.

We turn now to the La. C.E. art. 403 balancing test. The defendant’s repeated prior acts of beating Ms. Hudson, his former live-in girlfriend (and his four related convictions) show a pattern of — and a propensity to — savage but unarmed violence against women, namely, his dating partners. It takes a special kind of “man” to perpetrate such a robust pattern of evil, and the prior girlfriend-beating evidence shows that the defendant is — or at least was — that kind of special. None of the other evidence proves that particular point.

Nonetheless, Ms. Hudson’s testimony, if sought to be introduced alone into an evidentiary vacuum to prove that the defendant is the murderer, would indeed be inadmissible. However, such is counterfactual here. The probative value of La. C.E. art. 412.4 evidence must be evaluated in light of all the other evidence. Even without the La. C.E. art. 412.4 evidence, there is amply sufficient evidence in this case to, in the mind of a reasonable juror,

prove beyond a reasonable doubt that the defendant is the murderer. Without the La. C.E. art. 412.4 evidence, it is nonetheless clear that (1) *someone* beat Heaven to death; (2) *someone* tried to destroy evidence at the crime scene; (3) the defendant's truck and cellphone were at the crime scene for the entire time frame in which the murder occurred, except for part of the 11 o'clock hour of that morning; (4) the defendant lied to the police regarding his whereabouts during the time frame in which the murder occurred; (5) the defendant's DNA was found mixed with Heaven's blood at the crime scene and his clothing had the victim's blood on it; (6) the defendant's hands were bruised and swollen the day after the murder; (7) the defendant was captured on security video fighting with Heaven at the Sand Bar intensely enough to get them both ejected from the bar and banned for 48 hours — and this was only hours to minutes before she received her fatal beating; (8) the defendant was the only person present when Chasity arrived at Heaven's house and discovered she had been brutalized, and he knew Heaven had been brutalized as he told Chasity that Heaven was "messed up"; (9) the defendant declined to bring or accompany his girlfriend to the emergency room or call an ambulance for her; (10) Stephen Morgan's DNA was not found at the crime scene, nor was there any evidence that he had been at the crime scene during the relevant time frame. Given all of the other evidence, Ms. Hudson's testimony has extremely high probative value in identifying the defendant as the murderer, as it shows that the murder of Heaven fit exactly into his longstanding pattern of extreme domestic violence. It turns a body of circumstantial evidence into a compelling and intuitive narrative story.

Thus, the question becomes whether that probative value is “substantially outweighed by the danger of unfair prejudice.” Propensity evidence is, by definition, unfairly prejudicial because it invites the jury to conclude “guilt on grounds other than proof specific to the offense charged.” *Old Chief, supra; State v. Rose, supra*. In other words, it invites the jury to infer that “the defendant is the kind of person who would do something like this; therefore, he must have done it in this case.” Ordinarily such evidence is per se inadmissible under La. C.E. art. 404(B)(1)(a). However, when legislatively authorized, propensity evidence cannot be treated as categorically manifesting unfair prejudice *that requires exclusion*. For better or worse, our legislature has chosen to make exceptions for certain categories of particularly reprehensible conduct, such as the defendant’s beatings of Ms. Hudson.

Crucially, at trial, the defendant did not contest the truthfulness of any of the propensity evidence. This is not a case where the propensity evidence is testimony alleging conduct that was never reported to police, or that was never prosecuted; on the contrary, the defendant pled guilty to three crimes against Haley Hudson: (1) on March 30, 2011, simple battery, sentenced to 60 days’ incarceration, suspended; (2) on July 20, 2011, domestic abuse battery,³ sentenced to 8 months’ incarceration, suspended; (3) on August 29, 2012, second degree battery,⁴ sentenced to 18 months’ incarceration. She also alluded to his conviction (for attempted unauthorized entry into an inhabited dwelling) for which he received a 4-year sentence; this conviction

³ The original charge was domestic abuse battery.

⁴ The original charge was aggravated second degree battery with a dangerous weapon, an iron, by which he inflicted serious bodily harm.

was predicated on him following Ms. Hudson into her parents' house when she fled from him after the episode wherein he dragged her by her hair.⁵ The documentation of these convictions was provided to the court in hearing the defense objection (outside the presence of the jury) but was not introduced into evidence. The trial court's decision to admit Ms. Hudson's testimony is substantially supported by this corroboration of her testimony. Combined with the defendant's failure to controvert Ms. Hudson's testimony, such official corroboration — in the form of defendant's guilty pleas — of her testimony powerfully mitigates the risk of false, unsubstantiated, and/or previously unreported allegations unfairly prejudicing the jury.

Nonetheless, we must acknowledge that a lack of reliability is not the only unfair prejudice can result from propensity evidence. It can also come from other factors, including the relative age and emotional impact of the evidence, the propensity inference itself, a lack of similarity between the charged offense and the prior acts, and whether the evidence of the prior act is direct or weak and circumstantial. In this case, the most relevant of those factors is the emotional impact. Although Ms. Hudson's testimony was entirely credible, the facts described in her testimony are extremely inflammatory. They quite naturally evoke a strong emotional reaction, not only against the defendant, but, also, against the criminal justice system for

⁵ Ms. Hudson stated only that the defendant went to jail for four years as a result of the episode. In the *Prieur* hearing and in appellate brief, the defense argues that this evidence does not fit the elements of La. C.E. art. 412.4 because attempted unauthorized entry into an inhabited dwelling does not have an element of "abusive behavior." However, that qualification applies to the instant offense, not the prior act evidence. The qualification for the prior "crimes, wrongs, or acts" is that they must "involve assaultive behavior." Clearly, the defendant's attempted or actual entry into Ms. Hudson's parents' home when he pursued her as she fled from him and sought refuge there is part of the assaultive episode wherein he beat her and dragged her by her hair. The trial court did not abuse its discretion in admitting Ms. Hudson's testimony indicating that the defendant went to jail for four years as a result of this criminal episode.

letting him go free so quickly after those atrocities. Nonetheless, *the defendant himself brazenly created the very facts making that influence manifest*, and, although perhaps not rising to the level of distinctiveness required for *modus operandi*, the prior acts are similar enough to each other and the charged offense to mitigate unfair prejudice. Moreover, Ms. Hudson's testimony was keenly direct proof of the defendant's prior acts and was based on personal experience rather than mere observation. There is, emphatically, no inferential leap needed to conclude the defendant committed the prior acts from her testimony.

The heightened reliability of Ms. Hudson's testimony, combined with the similarities between the crimes, requires us to hold that the trial court did not abuse its discretion in admitting this evidence. The trial court did not abuse its discretion in holding the unfair prejudice does not substantially outweigh the probative value of Ms. Hudson's testimony.

CONCLUSION

The defendant's conviction and sentence are **AFFIRMED**.