

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WINONA

THIRD JUDICIAL DISTRICT

Court File No. 85-CR-23-937

State of Minnesota,

Plaintiff,

v.

**ORDER ON MOTIONS IN LIMINE
WITH RESPECT TO EVIDENCE**

Adam Taylor Fravel,

Defendant.

The above-entitled matter came before the undersigned Judge of District Court on September 3 and 4, 2024, for a pretrial hearing. The State of Minnesota was represented by Special Assistant Winona County Attorneys Phillip D. Prokopowitz and Christina Galewski. Defendant was present with his attorneys Zachary Bauer and Grace Dokken. The Court, having heard and considered the arguments of counsel and based upon all the files and records herein now makes the following:

ORDER

1. The Defendant's objections to the State's introduction of relationship and hearsay evidence are partially sustained and partially overruled, as detailed in the attached memorandum, which is incorporated by reference.

BY THE COURT


Nancy L. Buytendorp
Judge of District Court

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MEMORANDUM

Defendant has been indicted by the Grand Jury of Winona County with Murder in the First Degree –Past Pattern of Domestic Abuse; Murder in the First Degree – Premeditated; Murder in the Second Degree – Intentional (Without Premeditation); and Murder in the Second Degree – Unintentional (While Committing a Felony). These charges stem from incidents alleged to have been committed on March 31, 2023.

The State seeks to admit at trial evidence of prior incidents of domestic conduct and numerous hearsay statements the alleged victim made primarily to friends and family members. At the pretrial, the State presented testimony and evidence regarding the alleged victim's out-of-court statements the State intends to offer at trial describing the strained relationship between herself and the Defendant. The testimony and evidence included references and statements of instances of domestic violence committed by the Defendant against the alleged victim, statements as to her intent to end her relationship with the Defendant, statements as to threats by Defendant as to what would happen if she ended her relationship with him, statements of her intent to obtain separate housing for herself and her children upon ending her relationship, and statements regarding her concern for her safety.

In addition to testimony related to the alleged victim's out-of-court statements regarding her relationship with Defendant, the State seeks to introduce additional relationship evidence, including witness testimony regarding observations of verbal and physical violence by the Defendant against the alleged victim, as well as observations of injuries sustained by the alleged victim.

Defendant objects to admission of the evidence and moves the Court to issue an order preventing the admission of such evidence.

LEGAL ANALYSIS

I. Relationship Evidence

The State seeks to introduce evidence from witnesses regarding their observations of Defendant physically assaulting the alleged victim and testimony from witnesses that they observed bruises or injuries on the alleged victim. They also seek to introduce evidence concerning the alleged victim's explanations regarding the injuries.

Both parties agree that the testimony from Hailey Scott and Lauren Dubois regarding their observations of assaultive behavior during Facetime calls is admissible. Defendant objects to introduction of any other evidence regarding alleged domestic abuse, arguing that the incidences "do not constitute a regular way of acting, are not proximate in time to each other, and do not establish a similarity or principle around which they are organized..."

Relationship evidence, specifically evidence of alleged prior domestic violence is generally admissible under Minnesota Statute 634.20, which states that "evidence of similar conduct by the accused against the victim of domestic abuse...is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. Stat. § 634.20. "Similar conduct" is defined to include "evidence" of domestic abuse. *Id*

Further, the Defendant has been indicted for the offense of first-degree murder- past pattern of domestic abuse, a crime that requires the prosecution to prove beyond a reasonable doubt not only that her death was caused by the Defendant by committing domestic abuse, but also that the Defendant engaged in a pattern of domestic abuse against her. Minn. Stat. § 609.185

(a)(6). A past pattern of domestic abuse is defined as conduct consisting of two or more prior acts that are approximate in time to each other and reflect a regular way of acting. *State v. Bustos*, 861 N.W.2d 655, 661 (Minn. 2015) (quoting *State v. Hayes*, 831 N.W.2d 546, 554-555 (Minn. 2013)). Minnesota law allows for the introduction of evidence demonstrating a history of the relationship between the accused and the victim of domestic abuse, which includes prior acts of domestic violence. *State v. Barnslater*, 786 N.W.2d 646 (2010). This is particularly relevant in cases of first-degree murder where the defendant is accused of causing the death while committing domestic abuse, and there is a need to establish a past pattern of domestic abuse. See *Gulbertson v. State*, 843 N.W.2d 240 (2014). In this case, proof of prior incidents of domestic abuse is necessary to establish an element of a crime charged.

“It is important that the evidence presented at trial to demonstrate a past pattern of domestic abuse must meet appropriate admissibility requirements including relevancy and the rules with respect to hearsay.” *State v. Cross*, 577 N.W.2d 721, 725 (Minn. 1998) citing *State v. Auchampach*, 540 N.W.2d 808, 819 (Minn. 1995). The Court will address the relevance and the admissibility of each incident proposed by the State in the section below.

II. Hearsay Statements and other proffered evidence

The State seeks to offer statements made by Madeline Kingsbury to her family and friends under the original residual hearsay exception. Minn. R. Evid. 807 (Rule 807). The State properly notified the Defendant of its intent to offer the statements. The proposed statements are non-testimonial for purposes of the confrontation clause. The statements were not made to a governmental questioner and are not barred from admission on this basis. See *State v. Ahmed*, 782 N.W.2d 253, 258 (Minn.App. 2010). Further, none of the statements were made under oath and subject to cross examination.

Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). A hearsay statement is not admissible except as provided in the Minnesota Rules of Evidence or any other rules prescribed by the Supreme Court or the legislature. Minn. R. Evid. 802. There are several exceptions to the rule against hearsay. See e.g. Minn. R. Evid. 801(d)(1)-(2), 803-804. If a statement is not covered under a specific hearsay exception, it may still be admitted under the residual exception found in Minnesota Rule of Evidence 807. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019).

Rule 807, the residual hearsay exception, allows admission of statements not otherwise excepted from the hearsay rule under Minnesota Rule of Evidence 803 and 804 if the statements have “equivalent circumstantial guarantees of trustworthiness.” Minn. R. Evid. 807. To determine whether a hearsay statement has “circumstantial guarantees of trustworthiness”, the court must consider the totality of the circumstances. *State v. Keeton*, 589 N.W.2d 85, 90 (Minn. 1998). This requires looking to all relevant factors bearing on trustworthiness equivalent to the other Rule 803 exceptions. *State v. Robinson*, 718 N.W.2d 400, 408 (Minn. 2006), citing *State v. Byers*, 570 N.W.2d 487, 492 (Minn. 1997).

Historically, district courts have relied on factors established in *State v. Ortlepp* 363 N.W.2d 39, 44 (Minn. 1985) to determine the trustworthiness of a statement. These factors are 1) no confrontation clause issue because declarant testifies; 2) the statement is recorded; 3) the statement is against a declarant’s penal interest; and 4) the statement is consistent with the state’s other evidence. However, “the four *Ortlepp* factors are not the only relevant factors to consider but merely represent an application of the totality of the circumstances approach to satisfy the equivalent circumstantial guarantees of trustworthiness element of the residual hearsay

exception.” *State v. Vangrevenhof*, 941 N.W.2d 730, 737, (Minn. 2020), citing *State v. Robinson*, 718 N.W.2d 400, 409 (Minn. 2006). Other considerations in this trustworthiness analysis include:

whether the statement was given voluntarily, under oath, and subject to cross examination and penalty of perjury; the declarant’s relationship to the parties and her motivation to make the statement; the extent to which the declarant statement reflects her personal knowledge; whether the declarant ever recanted her statement; the existence of corroborating evidence; availability of evidence on the issue; reasons for the declarant’s unavailability; and the character of the declarant for truthfulness and honesty.

State v. Davis, 820 N.W.2d 525, 537 (Minn. 2012), *State v. Keeton*, 589 N.W.2d 85, 90 (Minn. 1998) (citing *State v. Byers*, 570 N.W.2d 487, 492-493 (Minn. 1997).

In addition to determining that a statement is sufficiently trustworthy, the court must find the following:

A) the statement is offered as evidence of a material fact; B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807.

It is important to note that Rule 807 requires that the evidence should not only be relevant and probative but also serve the interests of justice, which inherently includes avoiding undue prejudice. See Minn. R. Evid. 403.

The State cites to the case of *State v. Her*, 750 N.W.2d 258 (Minn. 2008). In *Her*, the defendant was convicted of first-degree domestic abuse murder. The District Court admitted into evidence the murder victim's out of court statements to family members about prior instances of domestic violence by the defendant, finding sufficient circumstantial guarantees of trustworthiness. The Supreme Court upheld this decision, noting that while the statements were not made under oath or subject to cross examination, the overall circumstances indicated their reliability. Key factors included that the victim made the statements voluntarily, based on firsthand knowledge, and never recanted. Notably, her uncle was able to recall specific incidents of abuse over five years later, demonstrating the clarity of her accounts. Additionally, a photograph of a bruise on the victim corroborated her allegations of being hit and kicked. The court also considered the victim's recent move away from the defendant, suggesting a legitimate fear for her safety. Finally, the defendant's partial admissions regarding the events and the victim's general character for truthfulness were also factored into the assessments of the statements trustworthiness. *Her* at 276-277.

PROPOSED TESTIMONY REGARDING THE GABBY PETITO THREAT

The State seeks to introduce hearsay statements from multiple witnesses regarding what the alleged victim disclosed to them about how Defendant threatened her in September 2021. Specifically, the State aims to have approximately nine witnesses, including family and friends of the alleged victim, testify that the alleged victim told them about how in September 2021, Defendant physically assaulted her and threatened that if she was not careful or did not mind, she

would end up like Gabby Petito. During the pretrial hearing, many of these witnesses described the alleged victim as being somewhat hysterical and upset when relaying the information.

Like the statements in *Her*, the alleged victim's remarks to these family members or friends were made voluntarily, based on firsthand knowledge, and never recanted. Notably, on the same day she reported the Gabby Petito threat to many of these witnesses, the alleged victim went to her father's house, indicating genuine fear for her safety. And although the statements were not recorded and not against the declarant's penal interest, the statements are consistent with the State's other evidence. It is also notable that the disclosure was consistent with all witnesses. The Defendant even admitted to making the statements, although he claimed it was merely a joke. Text exchanges between the alleged victim, the Defendant, and Katie Kolka regarding the threat further support her account.

Importantly, there is no evidence suggesting that the alleged victim's statements regarding the threats and assault were prompted by leading questions or that she had any motive to fabricate. In fact, she expressed a desire to make her relationship with the Defendant work, and her reputation for honesty was well regarded- acknowledged even by the Defendant.

This Court finds the witnesses' testimony credible based on their memory even under cross examination and their demeanor and candor while testifying. Considering the totality of the circumstances, the alleged victim's statements to these witnesses possess sufficient circumstantial guarantees of trustworthiness.

The alleged victim's statements regarding this threat and assault satisfy the requirements of Rule 807, as they are offered to establish material facts relevant to this case involving charges of premeditated murder and domestic abuse murder. Key material facts include facts crucial for determining elements such as premeditation, motive, and the pattern of domestic abuse. This can

include the history of domestic abuse, the dynamics of the relationship between the Defendant and the alleged victim, and specific incidents of threats or violence. This evidence proposed by the State is clearly material.

The proposed testimony is crucial in illustrating a pattern of domestic abuse and premeditation, which outweighs any other reasonably available evidence. The Defendant did admit the threat about ending up like Gabby Petito, and there are a couple of text messages referencing it. However, there is no additional evidence of any physical altercation occurring alongside this threat. Lastly, admitting the alleged victim's voluntary statements regarding the Defendant's threats and her concerns for safety supports the development of evidentiary law, ensuring that the truth is uncovered, and proceedings are justly resolved.

Except as indicated in the next paragraph, the testimony is **ALLOWED**. With multiple witnesses, there may be concerns about unnecessary cumulative evidence. While the Court recognizes that presenting evidence from multiple sources, even with some overlap, can provide a comprehensive view for the jury on a critical issue, it will reserve ruling on the matter. Appropriate objections regarding the potential redundancy of the evidence will be entertained during the witnesses' testimonies.

At the pretrial, there was testimony from Spencer Sullivan regarding the alleged victim's comments sometime later about the Gabby Petito threat and abuse. Given the time lapse between the alleged event and these hearsay statements, as well as the other available evidence concerning the incident, the testimony of Mr. Sullivan regarding the alleged victim's comments about the Gabby Petito threats and abuse are deemed inadmissible. The Defendant's objection to this testimony is **SUSTAINED**.

**PROPOSED TESTIMONY REGARDING THE ALLEGED VICTIM'S STATEMENTS
CONCERNING THE DEFENDANT'S FAILURE TO HELP AROUND THE HOUSE
AND CONTRIBUTE TO EXPENSES**

The State seeks to introduce hearsay statements from multiple witnesses regarding the alleged victim's statements made to them about the Defendant's failure to help around the house, take care of the children and contribute to household expenses.

The alleged victim's remarks to these witnesses were made voluntarily, based on firsthand knowledge, and never recanted. Further there is no evidence suggesting that the alleged victim's statements regarding the household dynamics were prompted by leading questions or that she had any motive to fabricate. In fact, she expressed a desire to make her relationship with the Defendant work. The statements that the witnesses intend to testify about are all consistent. And the alleged victim's reputation for honesty was well regarded- acknowledged even by the Defendant.

This Court finds the witnesses' testimony regarding the alleged victim's statements concerning household responsibilities is credible based on the witnesses' memory even under cross examination and their demeanor and candor while testifying. Considering the totality of the circumstances, the alleged victim's statements to these witnesses possess sufficient circumstantial guarantees of trustworthiness.

The alleged victim's statements regarding the household responsibilities satisfy the requirements of Rule 807, as they are offered to establish material facts relevant to this case involving allegations of premeditation and domestic abuse. Key material facts include the dynamics of the relationship between the Defendant and the alleged victim. This includes evidence that might illuminate the history of the relationship between the accused and the victim.

State v. Matthews, 779 N.W.2d 543 (2010). Evidence of previous quarrels or difficulties between the accused and the victim is relevant, as it tends to show the malice, motive, or premeditation of the accused. In some cases, it may also show lack of premeditation. In either case it is relevant. See *State v. Meyer*, 749 N.W.2d 844 (2008); *State v. Williams*, 593 N.W.2d 227 (1999); *State v. Loving*, 775 N.W.2d 880 (Minn. 2009), See also *State v. McCurry*, 770 N.W.2d 553 (Minn. Ct. App. 2009) (general testimony about tensions and disagreements was admissible as relationship evidence without regard to 634.20, and without being treated as *Spreigl* evidence.) citing *State v. Boyce*, 284 Minn. 242, 260, 170 N.W.2d 104, 115-16 (1969)(upholding admission of testimony, without notice, about prior “ill will or quarrels” between defendant and victim). “Character evidence which tends to show the strained relationship between the accused and the victim is relevant to establishing motive and intent and is therefore admissible.” *State v. Mills*, 562 N.W.2d 276, 285 (Minn. 1997) (citing *State v. Flores*, 418 N.W.2d 150, 159 (Minn. 1988).

Evidence of the Defendant’s failure to contribute to household responsibilities shows a strained relationship between the Defendant and the alleged victim and helps to illuminate the history of that relationship. This evidence can also be part of a broader context demonstrating a pattern of control or abuse over time and motive. This proposed testimony is highly probative, outweighing any other reasonably available evidence. It is important to point out that two witnesses intend to testify that when they observed physical abuse by Defendant, he expressed his concern about her not keeping up with household duties. There is no other evidence of Defendant’s contributions in that regard.

Additionally, admitting the alleged victim’s voluntary statements about the relationship struggles between the Defendant and the alleged victim supports the development of evidentiary law, ensuring that the truth is uncovered, and proceedings are resolved justly. The probative

value of the evidence outweighs any danger of unfair prejudice. See *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999) (“[w]here evidence sought to be introduced... does not tend to show that the defendant is guilty of a crime other than the crime with which he is charged, the chance of it creating unfair prejudice is less than is ordinarily the case when evidence is admitted under Rule 404(b).”) The Defendant’s objection to this testimony is **OVERRULED**. The proposed testimony is **ALLOWED**.

With multiple witnesses, there may be concerns of unnecessary cumulative evidence. The Court appreciates that collective presentation of evidence from multiple sources, even if somewhat overlapping, can help paint a comprehensive picture for the jury on a critical issue. However, the Court will reserve a ruling and invite appropriate objections on whether the evidence is unnecessarily cumulative until the witnesses are testifying.

PROPOSED TESTIMONY REGARDING THE ALLEGED VICTIM’S PLANS TO END THE RELATIONSHIP, PURSUE A RELATIONSHIP WITH ANOTHER, MOVE, AND HER CONCERNS ABOUT ENDING THE RELATIONSHIP

The State seeks to introduce hearsay statements from multiple witnesses regarding the alleged victim’s comments about her plans to end her relationship with the Defendant, her relationship with Spencer Sullivan, and her intention to move. These statements include the Defendant’s response, specifically remarks indicating, “you are not leaving with my kids; If you leave me, I’ll make sure you don’t see the kids again.”

The alleged victim’s remarks to these witnesses were made voluntarily, based on firsthand knowledge, and never recanted. Further there is no evidence suggesting that the alleged victim’s statements regarding her plans were prompted by leading questions or that she had any motive to fabricate. In fact, she previously expressed a desire to make her relationship with the

Defendant work. The statements that the witnesses intend to testify about are all consistent. And the alleged victim's reputation for honesty was well regarded- acknowledged even by the Defendant.

This Court finds the witnesses' testimony regarding the alleged victim's statements regarding her plans to leave the relationship and move is credible based on the witnesses' memory even under cross examination and their demeanor and candor while testifying. Considering the totality of the circumstances, the alleged victim's statements to these witnesses possess sufficient circumstantial guarantees of trustworthiness.

The alleged victim statements regarding her plans and Defendant's response satisfy the requirements of Rule 807, as they are offered to establish material facts relevant to this case involving claims of premeditation and domestic abuse. Again, key material facts include the nature of the relationship between the Defendant and the alleged victim. Also, motive "can help strengthen a finding that defendant deliberated about the killing." *State v. Palmer*, 803 N.W.2d 727, 735 (Minn. 2011) (quoting *State v. Anderson*, 789 N.W.2d 227, 242 (Minn. 2010). Motive includes evidence of prior conduct of the victim "known to have angered the defendant." *Palmer* at 735. (quoting *State v. Hughes*, 749 N.W.2d 307, 314 (Minn. 2008)).

Further, evidence of the Defendant's response to the alleged victim's plans to end the relationship can be part of a broader context demonstrating a pattern of control or abuse over time. This proposed testimony is highly probative in illustrating the nature of the relationship between the Defendant and the alleged victim and motive, outweighing any other reasonably available evidence. Additionally, admitting the alleged victim's voluntary statements about her plans and Defendant's response supports the development of evidentiary law, ensuring that the

truth is uncovered, and proceedings are resolved justly. The Defendant's objection to the testimony is **OVERRULED**. The testimony is **ALLOWED**.

With multiple witnesses, there may be concerns of unnecessary cumulative evidence. The Court appreciates that collective presentation of evidence from multiple sources, even if somewhat overlapping, can help paint a comprehensive picture for the jury on a critical issue. However, the Court will reserve a ruling and invite appropriate objections on whether the evidence is unnecessarily cumulative until the witnesses are testifying.

PROPOSED TESTIMONY REGARDING THE ALLEGED VICTIM'S CONCERNS FOR HER SAFETY PRIOR TO HER DISAPPEARANCE

The State seeks to introduce hearsay statements from multiple witnesses concerning the alleged victim's statements regarding her fear of the Defendant prior to her disappearance. Specifically, the State aims to have witnesses testify that the alleged victim told them that just days before her disappearance, she felt uneasy; that she was afraid of Defendant and afraid of being alone. The State also seeks to introduce testimony from Ms. Kolka that on the day the alleged victim went missing, in response to Kolka's text about getting through tough times, the alleged victim sent her a text stating, "I'm crying." This is all evidence of the alleged victim's state of mind regarding the Defendant.

Rule 807 requires that the evidence being offered be evidence of a material fact. The Minnesota Supreme Court has held that a homicide victim's state of mind regarding the defendant is generally relevant *only* where the defendant raises the defense of accident, suicide, or self-defense. *State v. Bauer*, 598 N.W.2d 352 (Minn. 1999), citing *State v. Blanchard*, 315 N.W.2d 427, 432 (Minn 1982) emphasis added; *State v. DeRosier*, 695 N.W.2d 97, 105 (Minn. 2005)("[o]rdinarily a homicide victim's state of mind is not relevant to whether the defendant

committed the crime.”) There is no indication at this time that Defendant has alleged that an accident, suicide, or self-defense caused the alleged victim’s death. Further, there is a risk that the jury will consider the alleged victim’s statements of fear as a true indication of Defendant’s intentions or actions; therefore, the danger of unfair prejudice outweighs any probative value. The Defendant’s objection to the state’s request to offer testimony regarding the alleged victim’s state of mind is **SUSTAINED**. The testimony is **NOT ALLOWED**.

However, Krista Hultgren and Katie Kolka testified at the pretrial that on the Thursday before her disappearance, the alleged victim told them that it was unusual that the Defendant was still home and creeping around and following her around, so she decided to go to Kolka’s house to work. Ms. Kolka also testified that the alleged victim claimed that the Defendant was making statements about her leaving him for Spencer and another man raising his kids. She testified that when the alleged victim came to her home, the two discussed text messages that the alleged victim was receiving from Defendant. The State seeks to introduce this testimony at the trial.

These statements by the alleged victim regarding the Defendant’s actions on the Thursday before she disappeared were made voluntarily, based on firsthand knowledge, and never recanted and is not state of mind evidence. Further, there is no evidence suggesting that the alleged victim’s statements regarding the events on the Thursday before she disappeared were prompted by leading questions or that she had any motive to fabricate. The statements are consistent with the evidence that she did go to Kolka’s house, indicating her concern about Defendant’s behavior. The discussion regarding the text messages took place as the alleged victim was receiving the messages. And the alleged victim’s reputation for honesty was well regarded- acknowledged even by the Defendant.

This Court finds the testimony concerning the alleged victim's statements regarding the Thursday before her disappearance to be credible, supported by the witnesses' clear memory even under cross examination, as well as their demeanor and candor during their testimony. Considering the totality of the circumstances, the alleged victim's statements to these witnesses possess sufficient circumstantial guarantees of trustworthiness.

The alleged victim's statements satisfy the requirements of Rule 807, as they are offered to establish material facts relevant to this case involving allegations of premeditation and domestic abuse. Key material facts include motive and planning activities, which include facts about what the defendant did prior to the killing showing engagement in activities directed toward the killing. Such evidence is crucial in establishing premeditation. *State. v. Cox*, 884 N.W.2d 400 (2016) (planning activity relates to facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing.)

Evidence of the Defendant following her around the house or "creeping around" and making statements about her leaving can also be part of a broader context demonstrating a pattern of control or abuse. This proposed testimony is highly probative in illustrating the nature of the relationship between the Defendant and the alleged victim, motive, and premeditation, outweighing any other reasonably available evidence. There is very limited evidence regarding what took place during the day before the alleged victim went missing. Additionally, admitting the alleged victim's statements supports the development of evidentiary law, ensuring that the truth is uncovered, and proceedings are resolved justly. The Defendant's objection to this testimony is **OVERRULED**. The testimony is **ALLOWED**.

**PROPOSED TESTIMONY REGARDING GENERAL NON-SPECIFIC STATEMENTS
OF ABUSE BY THE ALLEGED VICTIM**

The State seeks to introduce hearsay statements from several witnesses that the alleged victim made general claims that the Defendant abused her, pushed her, shoved her, choked her, mentally abused her, and would get physical with her and acted in threatening manners toward her and that things were getting worse overtime. These statements lack specificity and detail and do not possess the circumstantial guarantees of trustworthiness necessary to be deemed admissible under Rule 807. These statements are hearsay and not admissible under any exception. The Defendant's objection with respect to these statements is **SUSTAINED**. The testimony is **NOT ALLOWED**.

OTHER PROPOSED EVIDENCE

The State seeks to introduce hearsay statements from Lauren Dubois that on March 8, 2023, while attending doctor appointments at the Mayo Clinic, the alleged victim told her, "if anything happens to me or the kids" that "Adam was the one who would be responsible for it". Although this statement by the alleged victim was voluntarily made, it lacks sufficient detail and context, which undermines its circumstantial guarantees of trustworthiness. Furthermore, there is a significant risk that the jury may interpret the statement as a definitive indication of the Defendant's actions. The probative value of the statement is outweighed by the potential for unfair prejudice. Therefore, admitting the alleged victim's statement does not contribute to the development of evidentiary law, does not promote the discovery of truth, and does not lead to a fair resolution of the proceedings. The Defendant's objection to this testimony is **SUSTAINED**. This testimony is **NOT ALLOWED**.

The State seeks to introduce hearsay statements from Catherine Kingsbury, who reported that the alleged victim said, "Ellie has seen too much because of what the Defendant has done."

However, there is insufficient explanation of the meaning of the statement, particularly considering other testimony indicating that the alleged victim commented that abuse occurred outside the presence of the children. This statement lacks the circumstantial guarantees of truthfulness required for admissibility under Rule 807. Moreover, there is a risk that the jury may place undue emphasis on the statement due to the implication of a child being involved, potentially interpreting it as evidence that the Defendant was frequently abusive in front of the children. This risk of misinterpretation outweighs any probative value, leading to the danger of unfair prejudice. The Defendant's objection to this testimony is **SUSTAINED**. This testimony is **INADMISSABLE**.

The State also seeks to introduce hearsay statements from Spencer Sullivan and Lauren Dubois, who reported that the alleged victim claimed the Defendant gained access to her phone. However, there is evidence indicating that the alleged victim was unsure how the Defendant knew specific details about her life and only assumed he was going through her phone. This suggests that she did not have personal knowledge of the Defendant accessing her phone; rather, it was merely her opinion. As a result, this statement lacks circumstantial guarantees of trustworthiness necessary for admission under Rule 807. The Defendant's objection to this testimony is **SUSTAINED**. This testimony is **INADMISSABLE**.

The State seeks to offer testimony from Katie Kolka that when she offered her home to the alleged victim and the children to come and live with her, the alleged victim told her she would love to, but her own kids needed their space. The Court finds that this statement is not hearsay as it is not offered to prove the truth of the matter asserted. Further, the evidence is relevant. The Defendant's objection to this testimony is **OVERRULED**. This testimony is **ADMISSABLE**.

The State seeks to present testimony from Lauren Dubois regarding the alleged victim's inquiry about how Ms. Dubois escaped her own abusive relationship. This testimony is not considered hearsay, as it is not being offered to prove the truth of the matter asserted. However, it approaches state-of-mind evidence relating to the Defendant and lacks sufficient specificity and detail. Additionally, the potential for unfair prejudice outweighs any probative value. Consequently, the Defendant's objection to this testimony is **SUSTAINED**. This testimony is **NOT ALLOWED**.

The State seeks to introduce testimony from Katie Kolka that sometime during the week before the alleged victim went missing, the alleged victim texted her requesting to drop off her younger child because her older child had to go to the emergency room. This evidence has little relevance to this case and any probative value of the evidence is outweighed by the danger of unfair prejudice as the jury may infer that the Defendant caused the injury to the child despite the absence of supporting evidence. The Defendant's objection to this testimony is **SUSTAINED**. The testimony is **NOT ALLOWED**.

The State seeks to introduce testimony of Michaela Shaw that she personally heard the Defendant call the alleged victim names such as "bitch", "slut" and make the statement "god, you're so dumb." The State also seeks to have Ms. Shaw testify that she heard Defendant say to the alleged victim that she trapped him by getting pregnant with their daughter. "Evidence pertaining to the relationship between the defendant and the homicide victim is ordinarily admissible in criminal proceedings..." *State v. Blanchard*, 315 N.W.2d 427, 431 (Minn. 1982). This evidence is relevant. And the probative value of the evidence outweighs any danger of unfair prejudice. The Defendant's objection to this testimony is **OVERRULED**. This testimony is **ALLOWED**.

PRIOR INCIDENTS OF INJURIES OBSERVED BY FRIENDS OF THE ALLEGED VICTIM AND THE ALLEGED VICTIM'S STATEMENTS EXPLAINING INJURIES

The State seeks to introduce the following evidence from several witnesses regarding 1) their observations of bruises or injuries on the alleged victim, and 2) the alleged victim's explanations for those injuries:

Holly Stamschror testified during the pretrial that when the alleged victim's daughter was about 6 months old, she saw bruises and/or marks on the alleged victim and the alleged victim told her the injuries were caused by Defendant while being intimate and things got out of hand.

Katie Kolka testified that during the fall of 2022, she saw marks on the alleged victim's neck and that when questioned the alleged victim started crying and said she did not want to talk about it but later told her that the injuries were caused by the Defendant when they were fighting about the cleanliness of the home.

Lauren Dubois testified that prior to January 2023, she saw red marks on the alleged victim and when she asked about the marks, the alleged victim said not to worry about it and that she was working on it and figuring it out. She testified that she also gave the alleged victim makeup to cover the red mark on her neck.

Michaela Shaw testified that in the fall of 2022, the alleged victim told her that her shoulder was hurting because Defendant pushed her into a wall although she said she did not know if it was intentional.

Hailey Scott testified that in the fall of 2022, she observed a bruise on the alleged victim's neck during a FaceTime conversation and when she asked the alleged victim about the

bruise, she said it was a shadow, pulled her sweater up, and attempted to change the conversation.

These instances involving allegations and concerns of domestic abuse fall within the definition of domestic conduct and the testimony and evidence related to these instances are admissible under Minn. Stat. § 634.20 and as substantive evidence supporting the element of past pattern of domestic abuse. The testimony, if believed, would demonstrate a consistent pattern of behavior by the Defendant, with the instances occurring in sufficient proximity to one another. The probative value of the evidence outweighs any danger of unfair prejudice. Further, the hearsay statements related to these instances are admissible under Rule 807.

The alleged victim's remarks to these witnesses regarding the cause of her injuries were made voluntarily, based on firsthand knowledge, and never recanted. Further, there is no evidence suggesting that the victim's statements regarding the injuries were prompted by leading questions or that she had any motive to fabricate. In fact, she previously expressed a desire to make her relationship with the Defendant work. The statements that the witnesses intend to testify about are consistent with the injuries that they observed. And the alleged victim's reputation for honesty was well regarded- acknowledged even by the Defendant.

This Court finds the witnesses' testimony regarding the alleged victim's statements are credible based on the witnesses' memory even under cross examination and their demeanor and candor while testifying. Considering the totality of the circumstances, the alleged victim's statements to these witnesses possess sufficient circumstantial guarantees of trustworthiness.

The alleged victim statements regarding her injuries satisfy the requirements of Rule 807, as they are offered to establish material facts relevant to this case involving claims of premeditation and domestic abuse. Again, key material facts include the nature of the

relationship between the defendant and the alleged victim. Minn. Stat. § 634.20 specifies that evidence of domestic conduct by the accused against the victim is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice or other factors. This includes evidence that might illuminate the history of the relationship between the accused and the victim. *State v. Matthews*, 779 N.W2d 543 (2010). Further, one of the elements that must be proven for domestic abuse murder is past pattern of domestic abuse. The proposed evidence is relevant and material, outweighing any other reasonably available evidence. There is no additional evidence explaining those specific injuries. The probative value of this evidence outweighs the danger of unfair prejudice. Admitting the alleged victim's statements supports the development of evidentiary law, ensuring that the truth is uncovered, and proceedings are resolved justly. The Defendant's objection to these statements is **OVERRULED**. This testimony is **ALLOWED**.

CONCLUSION

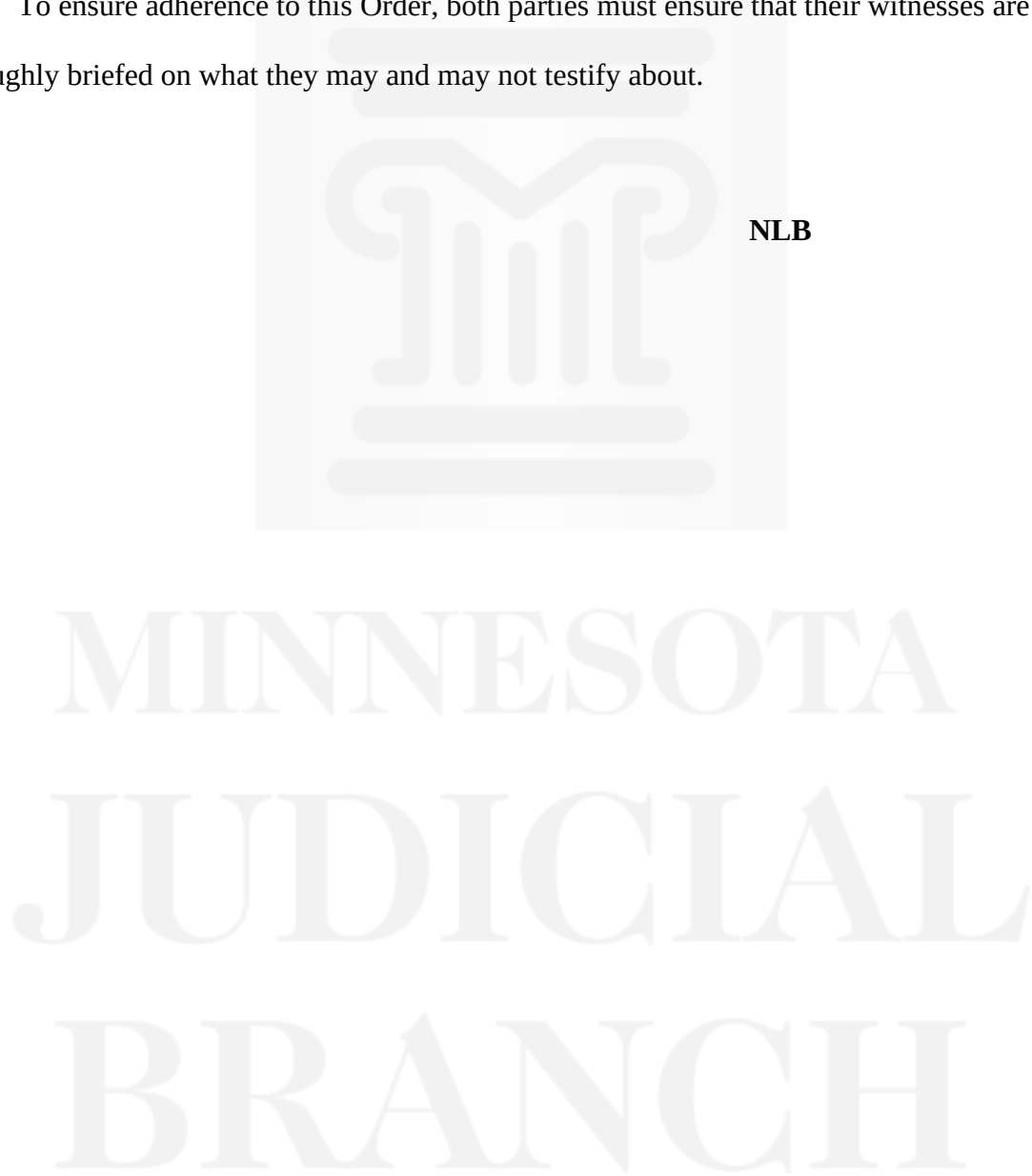
Hearsay is usually not allowed in criminal cases because it raises concerns about reliability and trustworthiness. The main issue is that without the chance for cross examination, the opposing party can't challenge the credibility of the testimony, especially when the declarant isn't present. However, hearsay can be admitted if it meets certain exceptions that ensure reliability. In this case, the Court examined the State's proposed hearsay statements, which are common in cases involving allegations of domestic abuse, where incidents often occur in private and go unreported. Victims typically share their experiences with family and close friends, making these statements crucial evidence. This Court carefully considered the factors in analyzing the trustworthiness of the proffered hearsay.

Further, in cases involving allegations of domestic abuse, especially cases involving a charge of murder – past pattern of domestic abuse, evidence of alleged prior domestic conduct is

generally admissible. The Court, to ensure that the jury uses the evidence solely for its permissible purpose, will give a cautionary instruction to the jury on receipt of this evidence both when the evidence is admitted and again during the final charge to the jury.

To ensure adherence to this Order, both parties must ensure that their witnesses are thoroughly briefed on what they may and may not testify about.

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