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**OFFICE OF
APPELLATE COURTS**

A25-0420

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Adam Taylor Fravel,

Appellant.

RESPONDENT'S BRIEF

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PROCEDURAL HISTORY

Respondent accepts the procedural history as stated in “Appellant’s Brief” pp.1-2.

LEGAL ISSUES

I. Did the trial court appropriately exercise its broad discretion when it ruled that Madeline Kingsbury’s prior statements were admissible under Minnesota Rule of Evidence 807?

Ruling Below: The trial court determined that the hearsay statements were admissible under Minnesota Rule of Evidence 807 as they were trustworthy, material, more probative than other evidence presented at trial, and their admission into evidence supported the development of evidentiary law, ensuring that the truth is uncovered, and proceedings are justly resolved.

Apposite Authorities:

Minn. R. Evid. 807

State v. Harvey, 932 N.W.2d 792 (Minn. 2019)

State v. Hallmark, 927 N.W.2d 281 (Minn. 2019)

State v. Bigbear, 10 N.W.3d 48, 54 (Minn. 2024)

II. Did the trial court appropriately exercise its broad discretion when it ruled that expert testimony on battered woman syndrome was admissible under Minnesota Rule of Evidence 702?

Ruling Below: The trial court determined that the expert witness was reliable and the expert’s testimony related to “battered woman syndrome” was admissible under Minnesota Rule of Evidence 702 as it would assist the jury in its determinations as to the presence of a past pattern of domestic violence and the trustworthiness of Madeline Kingsbury’s statements related to past instances of domestic abuse.

Apposite Authorities:

Minn. R. Evid. 702

State v. Heller, 12 N.W.3d 452, 466 (Minn. 2024)

State v. Hennum, 441 N.W.2d 793, 798 (Minn. 1989)

III. Did the prosecution commit reversible error in presenting expert testimony as to the cause and manner of Madeline Kingsbury's death?

Ruling Below: The trial court did not rule on the issue as Appellant did not object to the testimony at trial.

Apposite Authorities:

State v. Portillo, 998 N.W.2d 242, 250 (Minn. 2023)

State v. Chambers, 507 NW.2d 237 (Minn. 1993)

IV. Did the prosecution commit reversible error in presenting expert testimony related to battered woman syndrome?

Ruling Below: The trial court did not rule on the issue as Appellant did not object to the testimony at trial.

Apposite Authorities:

State v. Portillo, 998 N.W.2d 242, 250 (Minn. 2023)

State v. Ramey, 721 N.W.2d 294, 302 (Minn. 2006)

V. Did the prosecution commit reversible error in commenting on the proof beyond a reasonable doubt standard in final argument?

Ruling Below: The trial court did not rule on the issue as Appellant did not object to the comments at trial.

Apposite Authorities:

State v. Portillo, 998 N.W.2d 242, 248 (Minn. 2023)

State v. Ramey, 721 N.W.2d 294, 300 (Minn. 2006)

VI. Was there sufficient evidence to sustain Appellant's conviction for the crimes of premeditated murder and intentional murder?

Ruling Below: The trial court did not rule on the issue.

Apposite Authorities:

Minn. Stat. § 609.185, subd. (a)(1)

Minn. Stat. § 609.19, subd. 1(1)

State v. Cox, 884 N.W.2d 400, 411 (Minn. 2016)

VII. Was there sufficient evidence to prove beyond a reasonable doubt that Appellant caused the death of Madeline Kingsbury under circumstances manifesting an extreme indifference to human life?

Ruling Below: The trial court did not rule on this issue.

Apposite Authorities:

Minn. Stat. Ann. § 609.185 (a)(6)

State v. Sanchez-Diaz, 683 N.W.2d 824, 831 (Minn. 2004)

Lussier v. State, 821 N.W.2d 581, 590 (Minn. 2012)

STATEMENT OF FACTS

Initial Report and Police Response

During the evening of March 31, 2023, Winona police officers were dispatched to a residential duplex located in the city of Winona, Minnesota to check on the welfare of Madeline Jane Kingsbury. Upon arrival, officers spoke with a friend of Kingsbury's, K.K. K.K. informed officers that Kingsbury lived at the residence with Appellant and their children. K.K. was concerned about the welfare of Kingsbury as she had not heard from her that day. (T. pp. 2026-27, 4075-76 and 4090-91)¹

An officer contacted Appellant who was at his parents' residence in Mabel, Minnesota. Appellant told the officer that he and Kingsbury lived in the residence with their two children, E.F., who was five years old, and N.F., who was two years old. Appellant stated that he and Kingsbury dropped the children off at daycare that morning and returned home. Appellant left the residence later in the morning and drove Kingsbury's van to his parents' residence. Kingsbury was not present when he returned home. Appellant tried texting and calling Kingsbury, but she did not respond. Appellant picked up the children at daycare later that afternoon and drove to his parent's residence. (T. pp. 2031-43, Exhibit 1001)² Officers entered the residence after speaking with Appellant. They did

¹ "T." refers to trial transcript. The trial transcript is divided into twenty volumes with consecutive page numbering.

² The conversation was video and audio recorded. The recording was received into evidence as Exhibit 1001. The audio portion of Exhibit 1001 was digitally recorded and subsequently transcribed by the court reporter and included in the trial transcript.

not locate anyone inside. There did not appear to be any indication of forced entry into the residence or that there had been any physical altercation. (T. pp. 2044-45)

Appellant Interviews

Investigating officers interviewed Appellant on April 1 and April 2, 2023, regarding his relationship with Kingsbury and the events of March 31, 2023. (T. pp. 2070-76, Exhibits 1002 and 1005)³ During the interviews, Appellant told investigators that he and Madeline Kingsbury met while they were in college in Winona and that they had been in an “on and off” relationship for seven years. Kingsbury graduated from college and was working for Mayo Clinic in Rochester, Minnesota. Appellant was unemployed, finishing his college degree and primarily relied on Kingsbury to pay household expenses. Kingsbury would typically drive to work in Rochester on Mondays and Fridays and work from home the remaining days of the week. Appellant stated that they were in the process of ending their relationship and had decided to separate. Kingsbury had recently told Appellant that she had started a relationship with a college acquaintance of Appellant’s, S.S. Appellant was “hurt” when she told him about the relationship. They had agreed that she would not see S.S. while she and Appellant were living in the same residence. Upon separation, Appellant planned to live at his parent’s residence in Mabel. Kingsbury was in the process of looking

³ Both interviews were audio and video recorded. The recording of the April 1 interview was received into evidence as Exhibit 1002. The recording of the April 2 interview was received into evidence as Exhibit 1005. The exhibits were digitally recorded and subsequently transcribed by the court reporter and included in the trial transcript.

for a separate residence for her and their children to live. (T. pp. 2092-95, 2128-35, 2169-71, Exhibits 1002 and 1005)

Appellant told investigators that the morning of March 31, 2023, he and Madeline Kingsbury dropped the children off at daycare around 8:00 a.m. and returned home. Kingsbury had breakfast while he watched television and played on his laptop computer. Kingsbury told Appellant that she had to go to work in Rochester for a couple of meetings and went downstairs at approximately 8:30 a.m. Appellant saw Kingsbury a couple times that morning before he left the residence. Appellant stated he had planned to use Kingsbury's van that day to take some items to his parents' residence for storage and that Kingsbury was going to use his car to drive to work in Rochester. Prior to leaving for his parent's residence, he drove the van to a nearby Kwik Trip gas station to purchase gas. Appellant returned home and loaded Kingsbury's van with items that he had intended to store at his parent's residence. On the way to his parents' residence, near an area he identified as "Choice", he realized he had mistakenly loaded items that were to go to a storage unit near his Winona residence and not to his parent's residence. Appellant was upset about the error, turned around, and drove directly back to his Winona residence. When Appellant returned, he noticed his car was still at the residence, but Kingsbury was not. Later that afternoon he picked up the children from daycare and took them to his parents' residence. (T. pp. 2080-2116, 2147-68, 2204-14, Exhibits 1002 and 1005)

During Appellant's second interview, investigators asked him about an incident in which he had told Madeline Kingsbury that if she did not listen, she would end up like

“Gabby Petito”. Appellant acknowledged the incident. Appellant stated that at the time he had been “infatuated” with the Petito case. Appellant stated he came up to Kingsbury from behind, hugged her and stated, “you don’t want to end up like Gabby Petito”. Appellant stated he only meant for his act to be a joke. (T. pp. 2183-84).

The “Gabby Petito” case received nationwide media coverage in 2021. According to published news reports, Gabby Petito was traveling with her then boyfriend on a cross-country trip when her family lost touch with her and reported her as a missing person. A few weeks later, her remains were found in a national park in Wyoming. It was eventually determined that she died by strangulation. (T. p. 2225)

Searches of Madeline Kingsbury’s and Appellant’s Residence

On April 1, 2023, law enforcement investigators executed a search warrant on Madeline Kingsbury’s and Appellant’s residence. (T. pp. 2275-86, Exhibit 1008) While executing the search warrant investigators observed Kingsbury’s coat on a mini trampoline in the living room near the front door of the residence. (T. pp. 2490–96, 2515-18, Exhibit 1204) Investigators located Kingsbury’s cell phone inside a pocket of the coat. Also on the trampoline was a backpack containing her business and personal laptop computers, a pink container containing Kingsbury’s driver's license and credit cards, and a pager with the name “Mayo Clinic” on it. (T. pp. 2317-2335, 2515-18, Exhibits 1033-34 and 1043-1047) In what was identified as a “children’s bedroom”, investigators observed an air mattress. There was no bed sheet on the mattress. (T. pp. 2296-97, Exhibits 1016-1017) While searching the garage, investigators observed a pair of scissors, a bottle of rubbing alcohol

and a roll of black duct tape near each other on a shelving unit. (T. pp. 2327-2328, Exhibit 1041) The items were later observed in the same location during a subsequent investigative search of the residence. The duct tape was approximately two inches wide, black on one side and light gray on the other side. (T. pp. 3719-3730, Exhibits 1041, 1137, 1167, and 1297)

March 31, 2023 Cell Phone Global Positioning Data

Global Positioning System (GPS) data extracted from Appellant's cell phone revealed the various locations of his cell phone on March 31, 2023. (T. pp. 3296-3301) The data revealed Appellant's cell phone had been at his Winona residence until 7:57 a.m., at which time the cell phone traveled from the residence to the children's daycare and arrived back his residence at 8:14 a.m. Appellant's cell phone remained at the residence until approximately 4:14 p.m. when GPS data indicated it traveled from the residence to the children's daycare and to his parent's residence in Mabel, Minnesota. (T. pp. 3301-3307 and Exhibit 1145)

GPS data extracted from Madeline Kingsbury's cell phone revealed the location of her cellphone at various times on March 31, 2023. (T. pp. 3296-3301) The GPS application recorded Kingsbury's cell phone at her residence that morning, travel to the children's daycare, and return to her residence at 8:14 a.m. Her cell phone remained at the residence for the remainder of the day. (T. pp. 3307-3313 and Exhibit 1146)

“Wyze” Security Camera Cell Phone Data

Investigators recovered data and digital camera images associated with a Wyze camera system from Madeline Kingsbury’s and Appellant’ cell phones. Investigators determined that at one time there had been at least two “Wyze” residential security cameras inside the bedrooms of the residence. (T. pp. 2320-24, 3245-69, Exhibits 1166, 1191 and 1035-1038) An image from one of the bedrooms was recorded on March 24, 2023. There was also an image recorded on March 26, 2023, from an exterior security camera depicting the backyard of the residence. (T. pp. 3254-3258, 3262-65, Exhibits 1166 and 1296) The last time investigators could determine the Wyze camera system for the residence was operational was on March 29, 2023, when the base station for the cameras was accessed by Appellant’s cell phone and disconnected. (T. pp. 3266-68)

Madeline Kingsbury’s Last Documented Cell Phone Activity

Data collected from Madeline Kingsbury’s cell phone revealed the presence of an activity tracker application that recorded her movements, motions and other activity data. On March 31, 2023, movement and other activity were recorded on the application until approximately 8:14 a.m. No additional activity is recorded on the cell phone activity tracker for the remainder of the day. (T. pp. 3542-50, 4342-43, Exhibit 1161)

Data collected from Madeline Kingsbury’s cell phone revealed that on March 31, 2023, at approximately 8:14 a.m. an Apple Cash transfer of \$20 was made from Kingsbury’s cell phone to Appellant’s cell phone. (T. pp. 3550-51, pp.4344-45, Exhibit 1163)

Data collected from Madeline Kingsbury's cell phone revealed that on March 31, 2023, at approximately 8:14 a.m., 150 Caribou Coffee Rewards points to purchase a beverage were recorded on Kingsbury's cell phone. However, the points were never redeemed. (T. p. 4345)

Data collected from Madeline Kingsbury's cell phone revealed that on March 31, 2023, at approximately 8:14 a.m., a text message was sent from Kingsbury's cell phone to a cell phone associated with her sister M.H., reading "LMAO why am I C ugly." There existed no additional outgoing text messages or phone calls from Kingsbury's cell phone for the remainder of the day. (T. pp. 3564-3567, 4001-0219, 4343-4344, Exhibit 1298)

Data collected from Madeline Kingsbury's cell phone revealed that on March 31, 2023, at approximately 8:16 a.m., Kingsbury's cell phone went into "locked status" and remained in locked status until the battery expired. (T. pp. 4345-46)

March 31, 2023 Text Messages Recovered From Appellant's Cell Phone

Data collected from Appellant's cell phone revealed that on March 31, 2023, at approximately 10:29 a.m., a text message was sent from Appellant's cell phone to Madeline Kingsbury's cell phone reading, "'Got gas in van and stuff ready to go. Going to leave soon. When do you have to leave?'" There was no response to the text from Kingsbury. (T. pp. 3551-52, 4351, Exhibit 1163) At approximately 11:00 a.m., a second text message was sent from Appellant's cell phone to Madeline Kingsbury's phone, "You just going to stay home?" There was no response to the text from Kingsbury. (T. pp. 3553, 4352, Exhibit 1163) At approximately 1:33 p.m., a text message is sent from Appellant's phone to

Kingsbury's phone, reading "Um I'm back and my car is still here? You get a ride or something?" There was no response to the text messages from Kingsbury. (T. pp. 3552-56, 4365-67, Exhibit 1163)

March 31, 2023 Videos From Residential and Business Security Cameras

Law enforcement investigators recovered videos from security cameras that were recorded on March 31, 2023, from residences and businesses near the Winona residence and a driving route from Winona to Mabel, Minnesota. Shortly before 10:00 a.m., a security camera from a business near the residence recorded Appellant changing the license plates on Kingsbury's van as it was parked in the driveway.⁴ (T. pp. 4347-49, Exhibits 1318-1323)

At approximately 11:26 a.m., a security camera recorded Kingsbury's van leaving the driveway of the residence (T. p. 4353, Exhibit 1328) Between 11:30 a.m. and 12:00 p.m., security cameras at various times and locations recorded Kingsbury's van traveling on a southbound route from Winona in the direction of Mabel, Minnesota. (T. pp. 4266-75, 4352-57, Exhibits 1329-1337) The last recorded southbound image was recorded at 11:59 a.m. from a residential security camera on Highway 43. Approximately forty-four minutes later, the same security cameras recorded Kingsbury's van traveling northbound on Highway 43 in the direction of Winona. (T. pp. 4275-81 4360-64, Exhibits 1338-1343) At

⁴ Appellant acknowledges that the video captured Appellant changing the van's license plates. "Appellant's Brief", p. 8

approximately 1:28 p.m., Kingsbury's van was recorded by a security camera backed into the driveway of her residence. (T. pp. 4282-84, 4364-4365, Exhibits 1344-1345) ⁵

Recovery of Madeline Kingsbury's Remains

On June 7, 2023, the remains of Madeline Kingsbury were discovered by a Fillmore County Sheriff's investigator. The remains were located four tenths of a mile from the intersection of 198th Street and Highway 43, just south of "Choice" and approximately 12 minutes from the last camera location where the van had been recorded traveling southbound on Highway 43. (T. pp. 2721-2723, 2747) 198th Street is a gravel rural road that leads to private property primarily used for hunting, recreational and agricultural purposes. Kingsbury's remains were difficult to see from the roadway as they had been wrapped inside a gray fitted bed sheet that was held together with duct tape and were partially inside a culvert running under 198th Street. The duct tape matched the physical description of the duct tape observed by investigators on a shelving unit during searches of the garage at Appellant's residence in Winona. (T. pp. 2724-2746, 2803-2855, 3713-19, 3728 and Exhibits 1062-1066, 1071-1114)

Autopsy Results

Madeline Kingsbury's remains were transported to the Southern Minnesota Medical Examiner's Office where an autopsy was performed. (T. pp. 2936-3937) When the medical examiner removed the remains from the gray sheet, he observed that the body was fully

⁵ Appellant acknowledges that the security camera videos captured Appellant driving the van traveling southbound and later northbound on Highway 43. Appellant's Brief, p. 8.

clothed. The body had experienced significant decomposition. The medical examiner observed that a towel had been tightly wrapped around her face and head in a manner that would have obstructed her airflow if it had been placed on her head when she was alive. (T. pp. 2978-79) The towel was held on her head with a tight “slip knot” that had been tied on the back left side of her head. (T. pp. 2937-2970 and Exhibits 1119-1120, 1122-1127, 1130, 1134-1135)

Blockage of an air passage can lead to asphyxia and death. Once a person’s air passage is blocked, they will fall into a state of unconsciousness prior to dying. It may take blockage of a person’s air flow several minutes before they reach a state of unconsciousness. The length of time it would take to die by asphyxiation caused by a blockage of air flow is dependent upon the person. (T. pp. 2975-82)

The medical examiner determined the cause and manner of death as homicidal violence. By eliminating other potential causes of death, the medical examiner opined that Kingsbury’s death was most likely caused by asphyxiation. (T. pp. 2988-29)

Relationship Evidence

K.H. is Madeline Kingsbury’s biological mother. (T. p. 3875) On September 21, 2021, K.H. received a phone call from Madeline Kingsbury. Kingsbury sounded frantic and was hyperventilating. Kingsbury stated Appellant had pushed her back down onto the couch and put his hands around her neck and said to her, "I can make you disappear like Gabby Petito". (T. pp. 3891-93) Kingsbury physically separated from Appellant for a few days after the incident. In a subsequent conversation Kingsbury stated that she had received

assurance from Appellant that he would not do it again. Kingsbury told K.H. Appellant had said he was joking and it did not mean anything. Kingsbury told K.H. that she did not want to have the kids away from their dad and returned to her Winona residence a few days later. (T. p.3893)

K.H. had daily conversations with Madeline Kingsbury in the days leading up to March 31, 2023. During the conversations Kingsbury stated Appellant was following her around the house, looming around her, making her feel uncomfortable, and asking her about whether she had been communicating with S.S. (T. pp. 3898-99)

D.K. is the biological father of Madeline Kingsbury. (T. p. 3917) On September 21 or 22, 2021, D.K. had a telephone conversation with Madeline Kingsbury during which she was hysterical and sobbing. Kingsbury told him words to the effect that Appellant had “choked her and told her she was going to end up like Gabby Petito if she didn't mind.” D.K. immediately drove to Winona with his wife C.K. and met Kingsbury and the children at a local restaurant where they discussed the incident. D.K. told Kingsbury multiple times to report the incident to police. Later in the day, Kingsbury and her children followed D.K. back to his residence where they stayed for a few days. While staying at the residence, D.K. told Kingsbury that the incident was serious, dangerous and that she needed to end her relationship with Appellant. Kingsbury soon began to “temper” her description of the incident, expressed concerns about the children and their relationship with Appellant, and eventually returned to her residence in Winona. (T. pp. 3930-3938)

C.K. is married to D.K. (T. p. 3957) and is Madeline Kingsbury's stepmother. On or about September 21, 2023, she overheard a telephone conversation between D.K. and Madeline Kingsbury. C.K. traveled to Winona with D.K. immediately after the conversation ended. While driving to Winona C.K. had text and telephone conversations with Kingsbury. During the conversation she told Kingsbury to file a police report about the incident. Kingsbury stated she would think about it. C.K. and D.K. met Kingsbury and her children at a restaurant. C.K. observed a red mark on Kingsbury's neck during a conversation with Kingsbury at the restaurant. (T. pp. 3966-77)

M.H. is Madeline Kingsbury older sister. (T. pp. 3989-90) On or about September 21, 2021, she received a text message from Madeline Kingsbury stating that Appellant had choked her and said that Kingsbury would end up like Gabby Petito. Kingsbury stayed at her parents' residence for a few days. During this time M.H. advised Kingsbury not to return to Winona, but she did a few days later. (T. pp. 3997-99)

K.K. is a close friend of Madeline Kingsbury. (T. pp. 4075-4080) K.K. recalled that during the fall of 2022, Kingsbury was at her residence when she noticed that Kingsbury was wearing a turtleneck sweater. When K.K. joked about wearing the sweater given the warm temperature, Kingsbury began to tremble and shake. Kingsbury pulled down the neckline of the sweater and showed K.K. a reddish-brown mark on her neck. When K.K. inquired about the mark, Kingsbury stated she was not ready to talk about it. In a conversation later that day Kingsbury stated that Appellant had choked her. During the later conversation K.K. "begged" Kingsbury to go to the hospital or the police to get it

documented. Kingsbury responded that it was “no big deal”. (T. pp. 4080-83) On March 30, 2023, Madeline Kingsbury called K.K. and asked if she could come over to her residence to work. Kingsbury told K.K. that Appellant had been hovering over her and asking her questions as to why she was leaving him, are you really leaving me for another man, and you really going to let another man raise my kids. (T. pp. 4089)

H.S. is a close friend of Madeline Kingsbury. (T. pp. 4112-14) In February of 2021, H.S. was having a FaceTime conversation with Kingsbury. During the conversation H.S. observed Appellant enter the kitchen and yell at Kingsbury regarding the messiness of the house. When Kingsbury stated, “Maybe if I had a little help, it wouldn’t it be such a mess”, H.S. observed Appellant strike Kingsbury with the back of his hand across her face with enough force that it caused Kingsbury to fall back into the kitchen counter. A few days later H.S. discussed the incident with Kingsbury. H.S. asked Kingsbury how often such incidents occur. Kingsbury responded, “not very often”. (T. pp. 4116-19) In September 2021, , Madeline Kingsbury told H.S. about an incident in which she and Appellant were watching a news documentary about Gabby Petito. According to Kingsbury, at one point Appellant grabbed her by the neck and pinned her to the couch and told her that if she was not careful, she would be next. (T. p. 4120) H.S. recalled that sometime in 2022 she was having another Facetime conversation with Madeline Kingsbury. During the conversation H.S. observed purple bruising around Kingsbury’s neck and throat. There was one bruise on one side of her neck and then there was a line bruise underneath her chin. When H.S. confronted her about the bruising, Kingsbury immediately ended the conversation. (T. pp. 4120-21)

L.D. is a close friend of Madeline Kingsbury. (T. pp. 4144- 4146) In November of 2022, L.D. had a FaceTime conversation with Madeline Kingsbury, who was in the kitchen of her residence. During the conversation L.D. observed Appellant walking into the kitchen and yell at Kingsbury as to why dinner was not ready and why the house was such a mess. When Kingsbury stated she was working on it, Appellant shoved Kingsbury with enough force that it caused her to fall into the wall or refrigerator. (T. pp. 4149-50) In March of 2023, L.D. had a conversation with Madeline Kingsbury about leaving Appellant. During the conversation Kingsbury stated that Appellant had told her that if she left him, she would not be leaving with their children. (T. p. 4150) On March 8, 2023, L.D. met Madeline Kingsbury in Rochester. L.D. observed that Kingsbury had a reddish mark on both sides of her neck, slightly below her chin. L.D. asked Kingsbury if she was okay and if there was anything she needed. Kingsbury responded that she was working on a plan so that it did not happen again. (T. pp. 4151-4152)

H.Sh. is a close friend of Madeline Kingsbury. (T. pp. 4165-68) H.Sh. recalled that in the summer of 2018, she was visiting Kingsbury at Kingsbury's residence when she observed reddish purple bruising on both sides of Kingsbury's neck. When H.Sh. asked her about the bruising, Kingsbury laughed and said things got out of hand in the bedroom. (T. pp. 4171-72) In September of 2021, H.Sh. had a conversation with Madeline Kingsbury during which Kingsbury stated she had been watching a television program on Gabby Petito when Appellant put his hands on her throat and told her she should be careful, or it could be her. (T. pp. 4172-43)

M.S. was a close friend of Madeline Kingsbury. (T. pp. 4178-79) In the fall of 2021, M.S. had a telephone conversation with Kingsbury during which Kingsbury stated that she had been watching news about Gabby Petito when Appellant put his hand around her neck and pushed her into the couch until she could not breathe. Appellant stated to Kingsbury that it could be her if she was not careful, laughed, and then walked out of the house. . (T. pp. 4181-82) In the summer or fall of 2022, M.S. had a conversation with Kingsbury. During the conversation, Kingsbury frequently rolled and touched her shoulder. When M.S. inquired if anything was wrong, Kingsbury responded that she had been in Appellant’s way and he had pushed her into a wall. (T. pp. 4183-84) Over the course of their relationship M.S. had multiple conversations with Madeline Kingsbury regarding leaving Appellant. During the conversations Kingsbury stated Appellant had threatened that if she ever left him, he would make sure she would never see the children again. (T. p. 4184)

ARGUMENT

- I. The trial court appropriately exercised its discretion when it ruled that Madeline Kingsbury’s prior statements were admissible under Minnesota Rule of Evidence 807.**

A. Standard of Review.

Appellant bears the burden of proving that a trial court’s evidentiary ruling was error. State v. Harvey, 932 N.W.2d 792, 809–10 (Minn. 2019). Trial court evidentiary rulings should not be reversed unless it can be demonstrated that the ruling was an “abuse of discretion”. A trial court abuses its discretion “when its decision is based on an erroneous

view of the law or is against logic and the facts in the record.” State v. Hallmark, 927 N.W.2d 281, 291 (Minn. 2019).

When evidence was erroneously admitted over the objection of a defendant, the burden is on the appellant to demonstrate that there existed a reasonable possibility that the admission of the evidence created was not harmless. State v. Bigbear, 10 N.W.3d 48, 54 (Minn. 2024); State v. Heller, 12 N.W.3d 452, 468 (Minn. 2024). In determining whether harmless error occurred, the appellate court examines the entire record. An error is harmless if there did not exist a reasonable possibility that the error significantly affected the jury's verdict. Id.

B. Appellant has failed to demonstrate that the trial court abused its discretion in admitting Madeline Kingsbury’s hearsay statements into evidence under Minnesota Rules of Evidence 807 relating to an act of prior domestic violence.

On November 17, 2023, the State filed a notice of intent to offer into evidence Madeline Kingsbury hearsay statements to others that related to her relationship with Appellant, including instances of domestic violence and abuse, as substantive evidence under Minnesota Rule of Evidence 807. DOC ID #40, pp. 2-3. A victim’s hearsay statements related to a relationship and specific instances of domestic violence and abuse may be admitted under Rule 807 if the statements have “equivalent circumstantial guarantees of trustworthiness.” Rule 807 provides that in addition to determining that a hearsay statement is sufficiently trustworthy and admissible, the trial court must also find:

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.

On October 2, 2024, the trial court filed a detailed order and memoranda related to Appellant's objections to the State's introduction of relationship and hearsay evidence. DOC ID #161, pp. 1-23. The trial court found that the statements to family and friends regarding the incident were trustworthy, material, and:

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.

DOC ID #161, p. 9.

Appellant has failed to demonstrate that the trial court abused its discretion in admitting Madeline Kingsbury's statements to family members and friends regarding the September 21, 2021 incident. The trial court's ruling regarding Madeline Kingsbury's hearsay statements to family members and friends was not based on an erroneous view of the law. Nor was it against logic and the facts in the record. The trial court correctly determined that the hearsay statements provided additional highly probative information not contained in Appellant's acknowledgements or text messages. As such, Appellant has not met his burden of demonstrating the trial court abused its discretion in admitting the statements,

and Appellant's arguments to the contrary should be rejected and his request to vacate the verdicts or for a new trial must be denied.

C. Appellant has failed to demonstrate that there existed a reasonable possibility that any erroneous admission of Madeline Kingsbury's hearsay statements was not harmless.

Appellant's claim that Madeline Kingbury's hearsay statements misled the jury to as to the real nature of the incident is meritless. The record supports the true nature of the incident was not a joke or sexual foreplay as Appellant has suggested. Consider, for example, the following text conversation between Kingsbury and Appellant shortly after the incident:

Kingsbury: "You know, I'm not really okay with or over the fact that you put your hand around my neck and pushed me down in front of the kids earlier. So don't."

Kingsbury: "Not okay with it all but especially with them there."

Appellant: "You will adjust."

Kingsbury: "the f[***] I will".

Kingsbury: "You do that again without asking me, and you can go somewhere else."

Appellant: "You got it Mother"(silly face emoji)

Kingsbury: "Don't patronize, excuse me, don't patronize me.

Kingsbury: "That crossed a line."

Appellant: "then mind".

Kingsbury: "Stop."

(T. pp. 3396-97, Exhibit 1148). The evidence clearly reflects that the true nature of what happened on September 21, 2021 was a domestic assault.

In addition, Madeline Kingsbury's hearsay statements regarding the September 21, 2021 incident were only a small segment of a much larger presentation that reflected the true nature of her relationship with Appellant. Relationship evidence that revealed

Kingsbury thoughts and emotions as she struggled to reconcile her affection for Appellant and his violent and abusive behavior towards her. Relationship testimony from family and friends that included numerous other instances of emotional abuse, threatening behaviors, and physical violence.

Even if the admission of Kingsbury’s statements were erroneous, Appellant has failed to meet his burden of demonstrating to a reasonable possibility it significantly affected the jury’s verdict. As such, any erroneous admission of the testimony, if any, was harmless and Appellant’s request for the verdicts to be vacated or for a new trial must be denied.

II. The trial court appropriately exercised its discretion when it ruled that expert testimony on battered woman syndrome was admissible under Minnesota Rule of Evidence 702.

A. Standard of Review.

The admission of expert testimony is reviewed for abuse of discretion. State v. Heller, 12 N.W.3d 452, 466 (Minn. 2024). Admitting expert testimony is an abuse of discretion if the trial court's decision to admit the expert evidence is “based on an erroneous view of the law or is against logic and the facts in the record.” Id.

When evidence was erroneously admitted over the defendant’s objection, the burden is on the appellant to demonstrate that there existed a reasonable possibility that the admission of the evidence was not harmless. State v. Bigbear, 10 N.W.3d 48, 54 (Minn. 2024); State v. Heller, 12 N.W.3d 452, 468 (Minn. 2024). In determining whether harmless

error occurred the appellate court examines the entire record. An error is harmless if there did not exist a reasonable possibility that the error significantly affected the jury's verdict.

Id.

B. Appellant has failed to demonstrate that the trial court abused its discretion when it allowed into evidence expert testimony related to battered woman syndrome.

On October 30, 2024, after the State had completed presenting its relationship evidence, the trial court issued an order allowing the State to present expert testimony on “battered woman syndrome”. DOC ID #178. In its analysis of the issue, the trial court noted testimony that despite multiple instances of domestic abuse, Kingsbury engaged in counterintuitive behaviors including a continued relationship with the Appellant, failure to report incidents to law enforcement, self-blame, minimization, and justification of the injuries resulting from the defendant's abusive acts. The trial court also noted trial testimony that contrary to the advice of family members and friends telling Kingsbury to end the relationship and report the abuse to the police, Kingsbury chose to stay. The trial court found that expert testimony related to battered woman syndrome may assist the jury in understanding behaviors that might otherwise undermine the victim’s credibility or are beyond the understanding of an ordinary layperson. DOC ID #178.

1. Defendant has failed to demonstrate that the trial court abused its discretion in qualifying the witness as an expert.

Appellant initially argues the trial court abused its discretion in determining the witness was qualified to render expert testimony related to “battered woman syndrome”. Whether a witness is sufficiently qualified as an expert to provide testimony in the form of

an opinion lies within the district court's discretion. Qualification as an expert witness is not solely determined by formal training, but includes "knowledge, skill, or experience that would provide the background necessary for a meaningful opinion on the subject." Minn. R. Evid. 702.

At trial, evidence as to the expert's qualification was presented. The evidence included testimony as to the expert's experience in providing counseling and therapy to thousands of domestic violence victims, references to the expert's knowledge of clinical research in the area of domestic violence, the expert's national and international recognition as an expert and instructor in the field of domestic violence, and having previously testified as an expert in the field of domestic violence in various courts on behalf of both plaintiffs and defendants. (P.T. pp. 380-88, Exhibit 4) As such, the trial court correctly concluded that the "expert witness is reliable, based on her years of personal experience in the field of domestic and family violence and the relevant clinical and research literature she has read and managed." DOC ID# 178, p. 3.

Appellant has failed to identify any erroneous understanding or application of the law, or that the trial court's findings are against logic and the facts as presented. Therefore, Appellant's argument that the expert lacked the necessary qualifications to provide expert testimony on battered woman syndrome is without merit and must be rejected and his requests to vacate the verdicts or for a new trial must be denied.

2. Appellant has failed to demonstrate the expert's testimony lacked foundational reliability.

Appellant also argues the expert's testimony lacked foundational reliability required under Minnesota Rule of Evidence 702 as the expert's testimony was vague and failed to provide a methodology that would assist the jury in determining the presence of battered woman syndrome. It is well settled that expert testimony related to battered woman syndrome is admissible in a criminal proceeding as it may assist a jury in understanding a phenomenon not within the understanding of an ordinary lay person and help the jury to understand the behavior of a woman suffering from the syndrome which might otherwise be interpreted as a lack of credibility. See, State v. Hennum, 441 N.W.2d 793, 798 (Minn. 1989); State v. Grecinger, 569 N.W.2d 189, 194–95 (Minn. 1997); State v. Vance, 685 N.W.2d 713 (Minn. Ct. App. 2004) (reviewed denied Nov. 23, 2004).

Expert testimony is “foundationally reliable” if under the purpose for which it is offered provides underlying reliability, consistency, and accuracy of the subject about which the expert is testifying. State v. Garland, 942 N.W.2d 732 (Minn. 2020). However, the foundational reliability requirement “does not purport to describe what that foundation must look like for all types of expert testimony. The required foundation will vary depending on the context of the opinion, but must lead to an opinion that will assist the trier of fact”. Minn. R. Evid. 702, comm. cmt. 2006.

The purpose of the expert testimony in this case was to explain a phenomenon not within the understanding of an ordinary lay person that may assist the jury in its determinations as to the presence of a past pattern of domestic violence and the trustworthiness of Madeline Kingsbury's statements related to past instances of domestic abuse. DOC ID# 178, p. 3. Consistent with case law, the expert provided testimony

regarding victim minimization, normalization, acquiescence, and counterintuitive behaviors that are commonly observed with victims of domestic violence. The expert provided the jury with testimony as to common factors and thought processes of victims that give rise to the commonalities. (T. pp. 4204-20) As such, the jury was provided valuable knowledge, insight and an enlightened prospective into violent domestic relationships that would assist jurors in evaluating Madeline Kingsbury's statements and actions related to her tumultuous and violent relationship with Appellant.

That the expert was careful to qualify her testimony that victim commonalities are not present in every case of domestic violence should not be mistaken as to lack of foundational reliability as suggested by Appellant. Rather, it accurately describes the human experience commonly associated with domestic violent relationships. Not every case of domestic violence is identical. Expert testimony is to "assist" the jury in making a determination regarding a relevant fact. The expert's testimony in the instant case provided such assistance.

The trial court's order allowed and limited the expert testimony of battered woman syndrome as allowed in Hennum, supra. The order was not based on an erroneous view of the law, nor was it against logic and the facts in the record. As such the trial court's decision was not an abuse of discretion and Appellant arguments to the contrary are without merit and his request to vacate the verdicts or for a new trial must be denied.

C. Appellant has failed to demonstrate that there existed a reasonable possibility that any erroneous admission of expert testimony on battered woman syndrome was not harmless.

Any potential adverse impact on the jury verdicts resulting from the erroneous admission of the expert's testimony related to battered woman syndrome was diminished given the manner it was presented. Consistent with case law and the trial court's order, the expert's testimony was limited to a general understanding of the general characteristics victims of domestic violence frequently experience. The expert was careful to point out that such characteristics are not present in every relationship in which domestic violence is present. The expert testified that the presence of characteristics commonly observed in such relationship is often dependent on a variety of factors which may or may not exist in the relationship. (T. pp. 4200-4201) The expert testified that she was not aware of any of the facts surrounding the case and did not provide any conclusion suggesting that Madeline Kingsbury suffered from battered woman syndrome. (T. p. 4226).

Any potential that the erroneous admission of the expert's testimony significantly affecting the verdict was further diminished by the trial court's instruction with respect to expert testimony:

The State introduced evidence of commonalities of individuals that have suffered domestic abuse. This evidence was offered for the limited purpose of describing commonalities of individuals that have suffered domestic abuse. The admission of this testimony does not mean that Madeline Jane Kingsbury suffered domestic abuse or that commonalities of domestic abuse even exist. Those are fact questions for the jury to decide.

(T. p. 4635) Jurors are presumed to follow limiting instructions with respect to the proper use of evidence. State v. Ali, 855 N.W.2d 235, 249–50 (Minn. 2014)(referencing State v. Fardan, 773 N.W.2d 303, 320 (Minn.2009)).

Appellant has failed to meet his burden of demonstrating to a reasonable probability that the claimed erroneous admissions of the expert's statements significantly affected the jury's verdict. As such, if there were any erroneous admission of the testimony, it was harmless and Appellant's request to vacate the verdicts or for a new trial must be denied.

III. The prosecution did not commit reversible error in presenting expert testimony as to the cause and manner of Madeline Kingsbury's death.

A. Standard of Review.

When a defendant fails to object to the admission of evidence, subsequent appellate review is under the plain-error standard. State v. Portillo, 998 N.W.2d 242, 250 (Minn. 2023). Appellant has the initial burden to first demonstrate that the misconduct constitutes error and that the error was plain. Id. "For an error to be plain, the error must have been "clear or "obvious." Usually this is shown if the error contravenes case law, a rule, or a standard of conduct." Id.(internal citations omitted).

Upon a finding of prosecutorial misconduct constituting plain error, the burden then shifts to the State to demonstrate that the misconduct did not adversely affect Appellant's substantial rights by demonstrating "that there is no "reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." State v. Ramey, 721 N.W.2d 294, 302 (Minn. 2006)(internal citations omitted).

If the State fails to demonstrate that the error did not affect the defendant's substantial rights, the court "then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." State v. Portillo, 998 N.W.2d 242,

248 (Minn. 2023) (internal citations omitted). This analysis considers “whether it would have wider ramifications affecting the public's trust in the fairness and integrity of our judicial system.” *Id.* (citing Pulczynski v. State, 972 N.W.2d 347, 356 (Minn. 2022)).

B. Appellant has failed to demonstrate that the medical examiner’s testimony related to Madeline Kingsbury’s death was plain error

During the trial the medical examiner provided testimony regarding the autopsy he performed on Madeline Kingsbury’s remains. The medical examiner testified that there are multiple classifications as to manner of death. One of the classifications is homicide, which is defined as death at the hands of a third person. The medical examiner testified that his definition of homicide is a medical definition, not a legal conclusion, and does not mean murder. When asked his opinion as to the cause of Madeline Kingsbury’s death, the medical examiner responded, “homicidal violence”. Appellant’s trial counsel did not object. In a subsequent question the medical examiner was again asked his opinion as to the likely cause of Kingsbury’s death; he replied “asphyxiation”, which he described as a lack of oxygen, but he could not determine the actual mechanism of asphyxiation. (T. pp. 2986-89) Asphyxiation could include compression of the chest, blockage of an airway, or compression of the neck. *Id.*

The State disagrees with the Appellant’s assertion that the jury would have understood the term violence to denote a purpose or intent to cause injury or death. While the term “violence” can imply a purposeful or intentional act, violence is also is a term commonly used to describe circumstances involving a level of force that does not necessarily involve an inference of purpose or intent. For example, the term may be used

to simply describe the seriousness of a storm, car accident or sickness. In at least one concurring opinion of the Minnesota Supreme Court, the term "homicidal violence" was identified as a "nonspecific term for death caused by violent activity of another." State v. Tscheu, 758 N.W.2d 849, 868, (Minn. 2008) (Meyer concurring, n.1).

Appellant relies on State v. Chambers, 507 NW.2d 237 (Minn. 1993), to meet his burden to demonstrate the medical examiner's reference to "homicidal violence" was plain error. However, the underlying facts in Chambers are distinguishable from the instant case. In Chambers, the prosecutor specifically asked the medical examiner their opinion as to whether the murder was intentional. Defense counsel objected to the question. The trial court overruled the objection. The medical examiner proceeded to testify that to a "reasonable medical certainty" he believed the wounds "were meant to cause the subject's death." Chambers, 507 NW.2d at 238. None of these facts occurred in the instant case. There exists no clear case law, statute or evidentiary rule prohibiting a medical examiner from using the terminology "homicidal violence" in classifying the manner and cause of death. There exists no evidence that would suggest the prosecution asked the question with an intent to elicit the answer that was objectionable or improper. As Appellant has failed to meet his burden to demonstrate the testimony provided by the medical examiner was plain error, Appellant's requests to vacate the verdicts or for a new trial must be denied.

C. The medical examiner's testimony as to the manner and cause of Madeline Kingsbury's death did not affect Appellant's substantial rights.

Any potential adverse impact the medical examiner's use of the terminology "homicidal violence", if any, was minimal given that it was only used once in the medical

examiner's testimony. Upon doing so, the medical examiner provided no additional testimony defining the terminology as being reflective of a purposeful or intentional act. In final argument the prosecutor made no attempt to define the term "homicidal violence" or that the term itself suggested the actions causing Kingsbury's death were purposeful or intentional.

In addition, there exists no likelihood that the medical examiner's using the terminology "homicidal violence" had an adverse impact on the jury's verdict, especially considering the overwhelming evidence from which a jury could have reasonably concluded beyond a reasonable doubt Appellant acted with the intent to cause Kingsbury's death. From the facts presented, it was reasonable and rational for the jury to conclude beyond a reasonable doubt that the cause of Madeline Kingsbury death was asphyxiation from the towel tightly wrapped around her head in a manner that continuously blocked her airway, depleting her oxygen until such time as she fell into a state of unconsciousness and eventually died. It was equally reasonable and rational for the jury to conclude that the person who used the towel to block her airways could have easily discontinued the act but chose not to and thus intended her death. Appellant's intent to cause Kingsbury's death could also be readily found from other testimony presented during trial that included Appellant's previous implied threats to murder her if she did not mind or left him. As such, there existed no reasonable likelihood that the medical examiner's reference to "homicidal violence" had any adverse impact on the verdicts, and Appellant's request to vacate the verdicts or for a new trial must be denied.

D. Reversal is not necessary to protect the fairness or integrity of judicial proceedings.

Even if there were plain error in admitting the medical examiner's term "homicidal violence", reversal is not necessary to protect the fairness or integrity of the judicial proceedings. A medical examiner is permitted to offer an opinion as to the manner cause of death, including the use of the term homicide. State v. Bradford, 618 N.W.2d 782, 793 (Minn. 2000). The testimony likely had little, if any, effect on the verdict. There is no evidence that the prosecution intentionally solicited improper testimony or otherwise attempted to circumvent the rules of evidence. Reversal is not necessary to protect the overall fairness and integrity of the judicial proceedings.

IV. The prosecution did not commit reversible error in presenting expert testimony related to battered woman syndrome.

A. Standard of Review.

When a defendant fails to object to the admission of evidence, subsequent appellate review is under the plain-error standard. State v. Portillo, 998 N.W.2d 242, 250 (Minn. 2023). Appellant has the burden to first demonstrate that the misconduct constitutes error and that the error was plain. Id. "For an error to be plain, the error must have been "clear or "obvious." Usually this is shown if the error contravenes case law, a rule, or a standard of conduct." Id. (internal citations omitted). Upon a finding of prosecutorial misconduct constituting plain error the burden then shifts to the State to "show that there is no reasonable likelihood that the absence of the misconduct in question would have had a

significant effect on the verdict of the jury.” State v. Ramey, 721 N.W.2d 294, 302 (Minn. 2006)(internal citations omitted).

If the State fails to demonstrate that the error did not affect the defendant’s substantial rights, the appellate court “then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” State v. Portillo, 998 N.W.2d 242, 248 (Minn. 2023)(internal citations omitted). This analysis considers “whether it would have wider ramifications affecting the public’s trust in the fairness and integrity of our judicial system.” Id. (citing Pulczynski v. State, 972 N.W.2d 347, 356 (Minn. 2022)).

B. Appellant failed to demonstrate that the prosecution committed plain error in presenting expert testimony related to battered woman syndrome.

At trial the State presented expert testimony related to battered woman syndrome. The expert provided testimony that domestically violent or abusive relationships often have a power imbalance where the perpetrator of domestic violence has a more dominant role. (T. pp. 4202-03) The expert testified that once a domestic abuse victim becomes committed in a relationship, they will often begin to normalize emotional abuse and other acts that others may consider abusive as a normal part of a relationship. (T. pp. 4205-07) The expert testified that the power imbalance can carry over into more intimate aspects of a relationship that can include a victim performing acts with which they may not agree. The expert was asked whether that included normalizing violence in a sexual relationship. The expert explained that in her experience with sexual violence in a relationship, as an abuser’s dominance in the relationship grows, a victim’s fear will also grow. If the victim is asked

to do something they will often feel that they are unable to speak up or to say no out of fear. (T. pp. 4707-08) When asked as to whether victims of domestic violence ever request violence in their sexual relationship, the expert testified that she has not experienced such a situation, but victims have discussed how their partner has watched pornography and asked them to reenact physically abuse pornographic acts. (T. pp. 4209-10) Appellant's trial counsel did not object to either the question or the answer.

1. Appellant has failed to demonstrate that the prosecution committed plain error for failure to timely disclose the subject matter of the expert's testimony.

Appellant argues that the prosecution committed error by failing to proffer the above testimony in advance of the expert testifying. However, the procedural record demonstrates that the prosecution complied with its obligations under Minnesota Rule of Evidence 705 and Minnesota Rule of Criminal Procedure 9.01., subdivision 1(4). The above questions and similar testimony were presented during the grand jury proceedings. Appellant and the trial court received a complete transcript of the grand jury proceedings well in advance of trial. DOC ID #36, #48 and #81. The prosecution advised both Appellant and the trial court that it anticipated that the expert testimony would be similar to that which the expert provided in the grand jury proceedings that had been previously disclosed. (T. pp. 26-28) The trial court referenced in its order related to the expert's testimony that it had reviewed the grand jury transcript prior to making its decision as to the admissibility of the expert's testimony. As such, Appellant has failed to demonstrate prosecutorial error based on an assertion that the prosecution failed to comply with the rules of evidence or discovery.

2. Appellant has failed to demonstrate the prosecution committed plain error in its representations to the trial court.

Appellant argues that the prosecution committed plain error, claiming it falsely represented to the trial court that it did not intend to offer evidence of sexual abuse in the case. Appellant's Brief, pp. 18-19, 38. However, a more complete review of the record indicates the prosecutor made no false statements to the trial court.

The trial record indicates that as part of the discovery process Appellant provided notice to the prosecution of its intent to offer into evidence digital data from Kingsbury's cell phone and computer, including references to internet searches and pornographic websites on Kingsbury's phone and computer. (T. pp. 3277-85, Exhibit 2006) The prosecution objected to the admission of the evidence on foundational and relevancy grounds. In support of its argument as to lack of relevance the prosecutor stated, "*While it is the intent of the State to offer relationship testimony in this case, as the Court is very well aware of pertaining to that, the State in no way intends to offer into evidence that any of the sexual or any of the abuse that was suffered was sexual in nature, at least at this point in time.*" (T. p. 3282, emphasis added) Therefore, the State provided Appellant and the Court notice that although at that point in time it did not intend to offer evidence of sexual abuse, it was not necessarily ruling out the possibility of presenting such evidence.

Appellant has failed to identify any testimony and evidence offered by the prosecution suggesting that the abuse or injuries associated with Madeline Kingsbury's death corresponded to a sexual act. To the contrary, it is Appellant who for the first time posits the theory of erotic asphyxia or similar aggressive sexual activity as a possible

explanation for the bruises observed on Kingsbury's neck and her death. (T. pp. 3277-85, 4589-90, Exhibit 2006) As such, Appellant has failed to meet his burden of demonstrating the prosecution committed plain error by falsely representing to the trial court that it did not intend to offer evidence of sexual abuse in the case.

3. Appellant failed to demonstrate the prosecution committed plain error by eliciting expert testimony as to Appellant's character.

Appellant asserts but has failed to demonstrate that a generalized commonality that abuse in domestic relationships can also be seen within the respective sexual relationship spoke to Appellant's character. At no time was the expert asked, or did the expert provide testimony, about common characteristics or the existence of a profile suggesting those who commit acts of domestic violence or abuse think or act a certain way. At no time was the expert asked, or did the expert provide testimony, as to characteristics of Appellant suggesting or implying that he fit the profile of a perpetrator of domestic violence or any other classification or profile. Rather, the testimony highlighted that a victim may anticipate a request, so there may be counterintuitive victim behaviors within their sexual relationship as well. Because there was no expert testimony from which a jury could reasonably and rationally imply that Appellant fit within the profile of a domestic abuser, Appellant has failed to meet his initial burden to demonstrate the expert testimony constituted impermissible character evidence and his request to vacate the rendered verdicts or for a new trial should be denied.

C. The expert's testimony related to battered woman syndrome did not affect the Appellant's substantial rights.

Even if there was an erroneous admission of expert testimony related to battered syndrome, any likely adverse impact on the jury's verdict was minimal, if any at all. The expert's testimony was offered for the sole purpose of assisting the jury in its evaluation of Madeline Kingsbury's statements and actions related to her relationship with Appellant. The trial court's instructions clearly instructed the jury on how to evaluate the expert's testimony. Jurors are presumed to follow the court's instructions. The expert's testimony was carefully and methodically presented to comply with the trial court's order and ensure that it would not be misapplied to the facts of the case. The expert provided further testimony that she had no information as to the facts and circumstances of the instant case. (T. p. 4199) The expert testified that domestic abuse does not look the same in every relationship and commonality is not always present as there are a variety of facts and circumstances that impact a victim's experiences and the presence of commonalities. (T. pp. 4200-4227) Furthermore, there existed overwhelming relationship evidence depicting a prolonged tumultuous, abusive and physically violent relationship. As such the State has met its burden to demonstrate that any prosecutorial misconduct allowing for the erroneous admission of character evidence had little, if any, adverse impact on the jury verdicts.

D. Reversal is not necessary to protect the fairness or integrity of judicial proceedings.

Even if there was an erroneous admission of expert testimony related to battered syndrome, reversal is not necessary to protect the fairness or integrity of the judicial

proceedings. Generally, in determining whether reversal is required to ensure the fairness or integrity of judicial proceedings, focus is on whether the concerns would have wider ramifications affecting the public's trust in the fairness and integrity of the judicial system. Whether a defendant's substantial rights were affected by impermissible references to his character is a quite different matter from an implication that a defendant no longer has a presumption of innocence, which is a “fundamental component of a fair trial under our criminal justice system. See, Portillo, 998 N.W.2d at 254.

In the instant case, any prosecutorial misconduct creating plain error did not involve a repeated misstatement or violation of a constitutional provision or bedrock principle whose enforcement is necessary to the preservation of the administration of justice that if left unchecked, is likely to impact the fairness and integrity of future trials. See, Id. at 251-52. Reversal is not necessary to protect the overall fairness and integrity of the judicial proceedings.

V. The prosecution did not commit reversible error in commenting on the standard of proof beyond a reasonable doubt in final argument.

A. Standard of Review.

When a defendant fails to object to prosecutorial error in final argument, appellate review of any error is under the plain error standard. State v. Ramey, 721 N.W.2d 294 (Minn. 2006). Under the plain error standard of review Appellant has the burden to first demonstrate that the misconduct constitutes error and that the error was plain. State v. Portillo, 998 N.W.2d 242, 250 (Minn. 2023)(quoting, Ramey, 721 N.W.2d at 302 (citation

omitted)). “For an error to be plain, the error must have been “clear or “obvious.” Usually this is shown if the error contravenes case law, a rule, or a standard of conduct.” Id.(internal citations omitted). Upon a finding of prosecutorial misconduct constituting plain error the burden then shifts to the State to demonstrate that the misconduct did not adversely affect Appellant’s substantial rights by demonstrating that there is no “reasonable likelihood that the absence of the misconduct in question ‘would have had a significant effect on the verdict of the jury.’” State v. Ramey, 721 N.W.2d 294, 302 (Minn. 2006).

If the State fails to demonstrate that the error did not affect the defendant’s substantial rights, the appellate court “then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” State v. Portillo, 998 N.W.2d 242, 248 (Minn. 2023)(internal citations omitted). In determining whether reversal is required to ensure the fairness or integrity of judicial proceedings, focus is on whether the concerns would have wider ramifications affecting the public's trust in the fairness and integrity of the judicial system. Id. (citing Pulczynski v. State, 972 N.W.2d 347, 356 (Minn. 2022)).

B. Appellant has failed to demonstrate the prosecution committed plain error in commenting on the meaning of proof beyond a reasonable doubt in final argument.

In the instant case, the trial court provided the jury with the patterned instruction on proof beyond a reasonable doubt. (T. pp. 4632); Final Instructions, 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 3.02 (7th ed.) In final argument the prosecutor upon

reminding the jury to begin its deliberations with the presumption of innocence, asked the jury to:

Listen closely to the trial court's instructions. It's a standard review we don't typically use in our daily lives. It's a standard that you will use in the course of your deliberations. Proof beyond a reasonable doubt, as the Judge will tell you, is that you approach the decision as you do some of the most important affairs of your life. It does not mean any fanciful or capricious doubt. That if you have doubt, it's based upon reason and common sense. It does not mean beyond all possibility of doubt.

As we go through life, ladies and gentlemen, we have a lot of life experiences, a lot of important decisions that we make. It may be a career change, moving of the family, maybe a major medical procedure, could be the purchase of a home, marriage, becoming a mother or a father. Often when we make these decisions in our life, ladies and gentlemen, we do have some lingering doubts. Should I get a second opinion? Is this the right move for myself and my career and my family? Will I be a good spouse? Will I be a good mother or a good father? But even though we have those lingering doubts, we move forward with the decision because based upon the information that we have at that time, we have the confidence that it is the right decision. And that is what proof beyond a reasonable doubt means.

(T. pp. 4521-22)

The standard of “proof beyond a reasonable doubt” in and of itself is not necessarily self-defining and courts often rely on patterned jury instructions to provide guidance to jurors on the meaning and application of the standard. Courts and model jury instructions often equate the concept of proof beyond a reasonable doubt to the level of certainty required as commensurate with that of a person making an important life decision. See, CRIMJIG 3.02 Final Instructions, 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 3.02 (7th ed.)(“[P]roof beyond a reasonable doubt is such proof as ordinarily prudent people would act upon in their most important affairs.”) and 1A Fed. Jury Prac. & Instr. § 12:10 (7th ed.)(“ A reasonable doubt is a doubt based upon reason and common sense—

the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.”)

Explaining or referencing the jury instructions in closing arguments is permissible. Minn. R. Crim. P. 26.03, subd. 19(3). In State v. Jackson, 773 N.W.2d 111, 122 (Minn. 2009), the prosecution made the following statements regarding the burden of proof in a criminal trial: “[W]hen liberty interests are at stake it's only fair’ that the burden rest with the prosecution, but even with the presumption of innocence, many people are still convicted” On appeal, the Court concluded the prosecutor's argument did not misstate the burden of proof or shift the burden of proof and was a legitimate explanation of the State's burden. Id. at 122-23.

Appellant’s reliance on Portillo, for a finding of plain error in the prosecution’s comments related to proof beyond a reasonable doubt is misplaced. In Portillo, the Court determined the prosecution’s repeated comments related to presumption of innocence were plain error as they were contrary to well established case law that a defendant’s presumption of innocence remains with him throughout the jury’s deliberative process. 998 N.W.2d at 251. Unlike Portillo, Appellant has failed to identify any conclusively resolved case law, rule, standard of conduct or legal principle that was violated.

In the instant case, the prosecutor’s comments specifically directed the jurors to apply the trial court’s proof beyond a reasonable doubt instruction in their decision-making

process. References to examples of possible important decisions that people may commonly experience in their lives and decision-making processes that people often go through in making such important decisions is consistent with the wording that is often expressed in trials and in model instructions. The prosecutor's comments that jurors can have some lingering doubt in reaching their decision as to the existence of proof beyond a reasonable doubt is consistent with wording in the model instruction that proof beyond a reasonable doubt does not mean beyond all possibility of doubt. When the prosecutor's comments related to proof beyond a reasonable doubt are reviewed as a whole, they did not diminish the reason doubt standard or incorrectly convey the concept of proof beyond a reasonable doubt. As such, the prosecution did not err in its comments related to proof beyond a reasonable doubt as it did not misstate or otherwise diminish the meaning of proof beyond a reasonable doubt.

As the prosecution's comments substantially track the concept of proof beyond a reasonable doubt as expressed by the trial court and existing case law, and Appellant has provided no clear case law, rule, standard of conduct or legal principle that was violated in the prosecution's comments, Appellant has failed to meet his burden to demonstrate plain error and his request to vacate the rendered verdicts or grant a new trial must be rejected.

C. Any prosecutor misconduct in commenting on the burden of proof beyond a reasonable doubt did not affect the defendant's substantial rights?

Any plain error attributed to the prosecution misstating the meaning of proof beyond a reasonable doubt was minimal, if any at all. The trial court provided the jury with the model instruction on proof beyond a reasonable doubt. (T. pp. 4632) The prosecution began

its comments related to proof beyond a reasonable doubt by instructing the jury to “listen closely” to the trial court’s instruction. (T. p. 4521) The prosecution next advised the jury that “it is standard that you will use in the course of your deliberations”. (T. p. 4521) The prosecutor proceeded to reference the trial court’s instruction using nearly identical language. (T. p. 4521)

Any adverse impact on the jury’s verdicts in the prosecution’s comments regarding proof beyond a reasonable doubt determined to be plain error was substantially diminished by the prosecution’s preceding comments directing the jury to the trial court’s instruction on proof beyond a reasonable doubt and that they must use the instruction in their deliberations. See, State v. Hunt, 615 N.W.2d 294, 302 (Minn. 2000) (Prosecutor’s analogy in final argument to the ancient Greek juries, the substance of which implied that Greek juries would place a stone on either side of a scale for each successful argument by one party or the other, although questionable and confusing, does not rise to the level of plain error requiring reversal where prosecutor stated the appropriate burden of proof in his closing argument, and the trial court also properly instructed the jury on the state's burden of proof and told the jury to disregard any statements by the attorneys to the contrary.) Any plain error in the prosecution’s comments related to proof beyond a reasonable doubt was further minimized by the trial court instructing the jury “If an attorney's argument contains any statement of the law that differs from the law I give you, you must disregard the statement.” (T. p. 4633) As such the State has met its burden of demonstrating that any

prosecutorial misconduct in final argument did not create a likelihood that its absence would have affected the verdict.

D. Reversal is not necessary to protect the fairness or integrity of judicial proceedings.

Even if it is determined that the prosecutor's comments relating to proof beyond a reasonable doubt adversely affected the verdicts, reversal is not necessary to protect the fairness and integrity of the judicial proceedings. Appellant's reliance on this Court's decision in Portillo, as supporting a reversal in this case to protect the fairness and integrity of the judicial proceedings is misplaced. Appellant's Brief, p. 41. Unlike Portillo, the prosecution did not suggest to the jury that proof beyond a reasonable doubt standard does not carry with a defendant throughout the jury's deliberations. Unlike Portillo, the prosecution did not repeatedly misstate the law or otherwise mislead the jury. Unlike Portillo, there exists strong evidence of Appellant's guilt. As such, reversal is not necessary to protect the fairness and integrity of the judicial proceedings.

V. There existed sufficient evidence to prove beyond a reasonable doubt that Appellant acted with premeditation and intent to cause the death of Madeline Kingsbury.

A. Standard of Review.

When the State relies entirely on circumstantial evidence to prove an element of the offense, a two-step analysis is used to determine whether there was sufficient evidence to prove the element. State v. Cox, 884 N.W.2d 400, 411 (Minn. 2016). The first step is to

identify the circumstances proved and, in doing so, deference is given to the fact-finder's acceptance of the proof of these circumstances and rejection of conflicting evidence. *Id.* The second step is to examine what reasonable inferences can be drawn from the circumstances proved. *Id.*

When applying the standard of review, examination is made under the totality of the circumstances and not as discrete and isolated facts. *Id.* at 412. A conviction based on circumstantial evidence will not be overturned the basis of mere conjecture. *Id.*

B. There is sufficient evidence to prove beyond a reasonable doubt that Appellant caused the death of Madeline Kingsbury with premeditation and intent.

A person who “causes the death of a human being with premeditation and with intent to effect the death of the person or of another” is guilty of first-degree premeditated murder. Minn. Stat. § 609.185, subd. (a)(1). A person who “causes the death of a human being with intent to effect the death of that person or another, but without premeditation” is guilty of second-degree murder. Minn. Stat. § 609.19, subd. 1(1) (2014).

“Premeditation” means “to consider, plan or prepare for, or determine to commit, the act referred to prior to its commission.” Minn. Stat. § 609.18 (2014). Premeditation does not require proof of extensive planning or preparation, nor does it demand that a specific time period elapse for deliberation. *Cox*, 884 N.W.2d at 412. The State must simply establish that there was some appreciable passage of time between a defendant's formation of the intent to kill and the act of killing, and that during this time defendant deliberated about the act. *Id.* “With intent to” or “with intent that” means that the actor either has a

purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result. Minn. Stat. Ann. § 609.02.

Premeditation and intent are states of mind “generally proven through circumstantial evidence.” State v. Cruz, 997 N.W.2d 537, 552 (Minn. 2023). Inferences of premeditation and intent may be supported by several categories of evidence, including motive, planning activity, the nature of the killing, and a defendant's actions following the killing. Cox, 884 N.W.2d at 412(citing State v. Barshaw, 879 N.W.2d 356, 363 (Minn.2016); State v. Moore, 846 N.W.2d 83, 89 (Minn.2014); State v. Leake, 699 N.W.2d 312, 321 (Minn. 2005)).

Motive

This Court has found evidence of motive when a “defendant's relationship with the victim had deteriorated and [the] defendant was angry with [the victim,]” including “evidence that defendant and the victim had argued the night before the killing.” State v. Moore, 846 N.W.2d 83, 89 (Minn. 2014)(quoting State v. Lodermeier, 539 N.W.2d 396, 398 (Minn.1995); referencing State v. Pendleton, 759 N.W.2d 900, 910 (Minn.2009)). This Court has also relied on a defendant's expressions of jealousy in finding premeditation. Moore, 846 N.W.2d at 89. Motive evidence relevant to an inference of premeditation, may also include prior threats by the defendant to do violence to the victim. State v. Ortega, 813 N.W.2d 86 (2012).

In the instant case, the State presented substantial relationship testimony of Madeline Kingsbury’s and Appellant’s prolonged tumultuous, abusive and physically

violent relationship. A relationship in which Appellant became emotionally, physically and financially dependent on Kingsbury. A relationship that Appellant sought to control through emotional abuse, verbal threats and physical violence. A relationship that began to deteriorate in the weeks leading up March 31, 2023, as Kingsbury renewed an intimate relationship with a former college acquaintance of Appellant. Kingsbury decided to end her relationship with Appellant and move with their children to a separate residence contrary to the strongly expressed desires of Appellant and his previous threats that if she did not listen or “mind” that she would end up like “Gabby Petito” and that if she ever left him, he would make sure she would never see the children. Feelings that he expressed as he hovered over her the day before her death asking if she was still communicating with another man, why she was leaving him for another man, and was she really going to let another man raise his children. Evidence that reasonably and rationally leads to the conclusion that Appellant, who was no longer able to control Kingsbury through emotional manipulation, verbal threats and physical abuse, decided out of jealousy and anger to exercise the ultimate control by taking Madeline Kingsbury’s life. Motive evidence that supports a reasonable and rational inference that Appellant premeditated and intended the murder of Madeline Kingsbury.

Planning Activity--Efforts to Avoid Detection

Evidence was presented that Appellant made efforts in advance and after the murder to ensure his activities and whereabouts on the day of the murder were not detected. Appellant disconnected residential security cameras that would have recorded activity in

and outside of the residence. Appellant switched the van's license plates shortly after the murder. Appellant left his cell phone at the residence while transporting Kingsbury's remains. Appellant created a false alibi to mask his whereabouts and activities on the day of the murder. Shortly after the murder, Appellant took Kingsbury's body to a remote rural location and partially placed the body inside a culvert running under a gravel roadway and covered the exposed portion with large branches and brush. A remote and secluded location where the body remained undiscovered for several weeks. Facts and circumstances, that when viewed in light of the evidence as a whole, support a reasonable and rational conclusion that Appellant planned, prepared and acted with intent to murder Madeline Kingsbury.

Time of Death

Evidence supports that Appellant had planned and intended to kill Madeline Kingsbury in a short window of opportunity and acted with forethought in knowing her schedule. Kingsbury had planned to travel to work as scheduled in Rochester shortly after returning home from dropping off her children. Her coat had been placed near the doorway next to her backpack containing her driver's license, cell phone, work identification and work and personal computers. She had transferred Caribou Coffee points, which one can reasonably infer was to be picked up on her way to work. However, Kingsbury was murdered within a few minutes of returning home from dropping her children off at daycare. At approximately 8:14 a.m., the activity tracker on her cell phone stops recording. Shortly thereafter her cell phone goes into locked mode and remained at the residence until recovered by law enforcement investigators the next day. There was no subsequent

communication with her employer. A text message from her sister is left forever unanswered.

This window of a few minutes excludes other potential explanations for Kingsbury's death. There was no time for a heated argument. There was no time for sexual foreplay as suggested by Appellant. However, when the evidence is viewed as a whole, there was more than enough time for Appellant to approach Kingbury from behind, wrap the towel around her head and fulfill a preconceived plan to commit murder.

Nature of the Killing

Evidence supports that Madeline Kingsbury's death was the result of asphyxia. While asphyxia alone would not necessarily support an inference of premeditation, the circumstances surrounding the act may do so. See, State v. Profit, 591 N.W.2d 451 (1999) (The intricate manner in which a ligature was looped and tied, the tightness of the ligature, and the fact that it was knotted in a position that left a deep furrow in the victim's neck supported findings of both intent and premeditation). The asphyxia that caused Kingsbury's death was from a towel that had been tightly wrapped around her face and head in a manner that would have obstructed her airflow if it had been placed on her head when she was alive. A towel that was secured on her head with a "slip knot" that had been tied tightly on the back left side of her head. Death by asphyxia is not immediate. Constant pressure would need to be applied for a prolonged period of time in a manner that continued to block Kingsbury's airways as she fell into a state of unconsciousness and eventually died. A passage of time during that Appellant could have taken measures to prevent Kingsbury's

death, he could have let go, he could have stopped. But he chose not to. Facts and circumstances that support a reasonable and rational inference Appellant prepared, planned and intended to murder Madeline Kingsbury.

The State has presented sufficient evidence to sustain Appellant's conviction for first-degree premeditated murder and second-degree intentional murder. Appellant's arguments suggesting Madeline Kingsbury's death was the result of an accident or ordinary negligence requires this Court to engage in conjecture contrary to established case law. Appellant's requests to vacate the verdicts or for a new trial must be denied.

VII. There existed sufficient evidence to prove beyond a reasonable doubt that Appellant caused the death of Madeline Kingsbury under circumstances manifesting an extreme indifference to human life.

A. Standard of Review.

When reviewing a claim of insufficient evidence, review is limited as to whether the fact finder could have reasonably concluded that defendant was guilty beyond a reasonable doubt. In doing so, the court views the evidence in the light most favorable to the verdict and assumes that the fact finder believed the State's witnesses and disbelieved any contrary evidence. State v. Sanchez-Diaz, 683 N.W.2d 824, 831 (Minn. 2004).

B. There is sufficient facts to prove beyond a reasonable doubt that Appellant caused the death of Madeline Kingsbury under circumstances manifesting an extreme indifference to human life.

A person who "causes the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim or

upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life” is guilty of first-degree murder while committing an act of domestic abuse. Minn. Stat. Ann. § 609.185 (a)(6). Extreme indifference to human life involves “recklessness or at a minimum, gross negligence.” Lussier v. State, 821 N.W.2d 581, 590 (Minn. 2012)(quoting State v. Bird, 734 N.W.2d 664, 677 (Minn.2007)). “[O]ne acts recklessly by creating a substantial and unjustifiable risk that one is aware of and disregards.” State v. Engle, 743 N.W.2d 592, 595 (Minn. 2008)(defining reckless for the purpose of statute criminalizing reckless discharge of firearm within municipality).

In the instant case, evidence was presented that Madeline Kingsbury died from asphyxia. Asphyxia caused by Appellant wrapping a towel tightly around her face and head in a manner that obstructed her airflow. A towel that was held on her head with a “slip knot” that had been tightly secured on the back left side of her head. Death by asphyxia is not immediate. Constant pressure would need to be applied for a prolonged period of time in a manner that continued the blockage of Kingsbury’s airways as she fell into a state of unconsciousness and eventually died. A passage of time from which Appellant could have taken measures to prevent Kingsbury’s death but chose not to. Facts and circumstances from which a jury could have reasonably concluded beyond a reasonable doubt that Appellant caused the death of Madeline Kingsbury under circumstances manifesting an extreme indifference to human life. As such, Appellant’s arguments that Appellant’s acts

did not manifest an indifference to human life and his conviction for the offense of domestic abuse first degree murder to be vacated should be rejected.

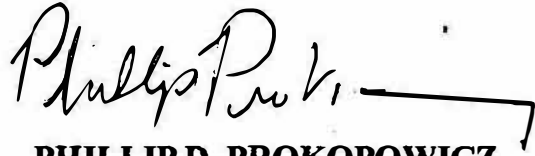
CONCLUSION

Appellant has failed to meet his burden of demonstrating that the trial court erred in admitting evidence of Madeline Kingsbury's hearsay statements related to the September 21, 2021 incident and expert testimony related to battered woman syndrome. Appellant has also failed to meet his burden of demonstrating the prosecution committed plain error in presenting evidence or arguments during the trial. Any erroneous admission of evidence from the trial court's error or prosecutorial misconduct had minimal, if any, adverse impact on the verdicts. Reversal is not necessary to preserve the fairness or integrity of judicial proceedings.

Appellant concedes that the State presented sufficient evidence for the jury to find him guilty of the offense of second-degree unintentional murder. Appellant's arguments attributing the cause of Kingsbury's death to an accident or ordinary negligence is contrary to the facts and circumstances and would require the Court to engage in speculation and conjecture. The State presented sufficient evidence that Appellant caused the death of Madeline Kingsbury with premeditation and intent. As such, Appellant's convictions for the offenses of premeditated first-degree premeditated murder, first-degree murder while committing an act of domestic violence and second-degree intentional murder should be affirmed.

Dated: November 5, 2025

Respectfully submitted,

A handwritten signature in black ink, reading "Phillip D. ProkoPowicz". The signature is stylized with a large, looped "P" and a long horizontal line extending from the end of the name.

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STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

CERTIFICATE OF

DOCUMENT LENGTH

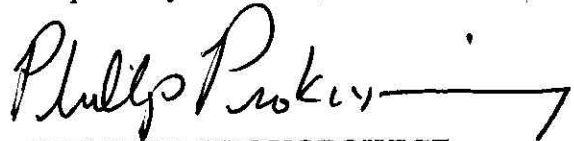
Adam Taylor Fravel,

Appellant,

I hereby certify that this document conforms to the requirement of the applicable Rules, is produced with a Times New Roman, 13 pt. font, and the length of this document is 13,929 words exclusive of the table of contents and table of authorities. This document is prepared using Word Microsoft 365.

Dated: November 5, 2025

Respectfully submitted,



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