IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
FIRST DIVISION

STATE OF ARKANSAS **PLAINTIFF**

v. **43CR24-551**

AARON SPENCER **DEFENDANT**

STATE'S BRIEF IN SUPPORT OF ITS RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE

Comes now, the State of Arkansas, by and through the Lonoke County Prosecuting Attorney, and for its Response to the Defendant's Motion in Limine to Exclude Evidence states:

I. INTRODUCTION

Aaron Spencer (hereinafter, "Spencer") is charged with Murder in the Second Degree in the killing of Michael Fosler (hereinafter, "Fosler").

The chain of events leading to Fosler's murder began on July 8, 2024, when Defendant arrived at Leanna Higginbotham's house, an acquaintance of Fosler, and told her that he had raped his minor daughter and wanted Fosler's phone number and address. Spencer told Higginbotham, "(d)on't call anyone, don't call the police."

Out of concern, Higginbotham spoke with a family member about her interaction with Spencer. Her family member, a mandated reporter, was required to report the rape allegations to law enforcement and reported them to the Lonoke County Sheriff's Office (LCSO). That same day, Sergeant John Ingram and Deputy Bryan Duke of the LCSO responded to Spencer's residence to open an investigation about the rape allegation concerning his daughter. (The interaction was recorded by Sergeant Ingram on his body worn camera, and a transcription of the relevant portions

are included as Attachment A.) Sgt. Ingram asked Spencer "is there any truth to this?" Spencer replied, "I don't know."

While attempting to investigate the allegations, Spencer was mainly concerned about the identity of the mandated reporter and his beliefs in the inadequacies of the judicial system. Sgt. Ingram stated to Spencer, "(w)e still don't live in a country where you can take the law into your own hands?" Spencer responded, "bullshit," see Attachment A to State's previously filed response. Eventually, Spencer's wife, Heather Spencer, provided information to the deputies regarding the sexual assault of their daughter.

Spencer's daughter was interviewed at the Wade Knox Children's Advocacy Center on July 8, 2024. Cabot Police Department obtained a warrant on July 11, 2024, for Fosler's arrest on one count of Rape and one count of Internet Stalking of a child, both Y felonies. Fosler was arrested that same day and taken to Lonoke County Jail. Fosler was seen at his first appearance hearing after arrest by a Lonoke County District Court Judge on July 12, 2024, and his bond was set at $50,000. Fosler was also ordered not to have contact with any minor, a violation of which would result in his bond being revoked. Fosler made bond on July 17, 2024, and was released with conditions of pre-trial release, including the no contact order.

On October 8, 2024, at 1:12 am Heather Spencer called 911 to report their daughter was missing. Heather Spencer said they found their daughter's bed made up to look like she was asleep but was not in the bed. Consistent with Spencer's beliefs expressed to law enforcement on July 8, 2024, Spencer proceeded to take the law into his own hands. Spencer later told investigators that he immediately got in his truck to look for Fosler, stating "he was vigilant for him."

Spencer left his home traveling westbound on Highway 236. Spencer stated as he was turning onto Highway 31 at the intersection of Highway 236, he saw Fosler's white Ford truck

pass him turning onto Highway 236 eastbound back towards Spencer's house with his daughter in the passenger seat. Spencer turned around and began following Fosler. He was honking and flashing his lights in an attempt to stop Fosler.

After following Fosler for approximately six (6) miles, Spencer struck Fosler's truck containing both Fosler and Spencer's daughter. As a result, Fosler's truck was rammed into a ditch, striking a wooden entry gate post. After exiting his vehicle, Spencer then began to fire on Fosler. Spencer continued to fire a total of 16 times; 15 of 16 rounds entered Fosler. After firing, Spencer pistol whipped Fosler in the face. Then, for the first time that night, Spencer finally called 911 at 1:34 am stating, "Michael Fosler is fucking dead on the side of the road for trying to kidnap my daughter. I had no choice."

In fact, Spencer had multiple choices that night. Spencer could have called 911 once he discovered Fosler and his daughter. Spencer stated in his interview that he was driving so fast that he could not unlock his phone to call 911. However, a forensic examination of his phone from the minutes leading up to Fosler's killing paints a different story. Not only does the examination show that his phone was unlocked, but was in use. Spencer had a 1 minute, 39 second phone conversation with a family member at 1:16 am, received multiple text messages marked "read", and called his wife twice around 1:31 am, all before calling 911. Spencer also had good reason to believe his daughter had snuck out of the house and had not actually been kidnapped that night.

Spencer did not want police involved when he initially discovered his daughter was sexually assaulted nor did he want them involved when he found Fosler with his daughter. Spencer's understandable rage did not give him the legal right to kill Fosler. His belief espoused on July 8, 2024 to Sgt. Ingram that it was "bullshit" that we still live in a country where you cannot take the law into your own hands and runs counter to our entire justice system.

II. ARGUMENT

The evidence that the defense wants excluded regarding Spencer's statements that he didn't want police involved in the rape investigation of his daughter and his implicit comments that he could take the law into his own hands and not be charged with a crime are directly related to his actions on the night of October 8, 2024. Not only are they relevant statements by a party-opponent, the evidence is also clearly admissible under Ark. R. of Evid. 404(b) which allows evidence of other acts that are admissible to prove motive, intent, plan, and knowledge. Evidence is relevant if "having any tendency to make the existence of any fact that is of consequence to the determination of the action *more probable* or less probable than it would be without the evidence," Ark. R. of Evid. 401 [Emphasis added]. The probative value is not substantially outweighed by any danger of unfair prejudice, and therefore exclusion under Ark. R. of Evid. 403 is therefore unwarranted. Spencer's affirmation that one *can* take the law into one's own hands makes his killing of Fosler more probable that it was an extrajudicial act, done without any consideration of the law on self-defense or the defense of others.

a. Spencer's Statements are Relevant under Arkansas Rule of Evidence 401.

The Defendant's statements to Sergeant Ingram on July 8, 2024, are directly relevant under Ark. R. Evid. 401 and 402 to the central disputed issue in this second-degree murder case: whether Aaron Spencer killed Michael Fosler knowing his conduct was unlawful and without justification.

Second-degree murder requires proof that Spencer knowingly caused Fosler's death under circumstances manifesting extreme indifference to the value of human life, or that he acted with the purpose of causing serious physical injury or death. Ark. Code Ann. § 5-10-103(a)(1).

His July 8 statement that the prohibition on vigilante justice is "bullshit" is evidence that, three months later on October 8, he consciously believed he was entitled to act without regard to the

law. It is probative of an extrajudicial mindset rather than reasonable belief in the necessity of deadly force.

If the defense raises justification, the State bears the burden of disproving that defense beyond a reasonable doubt. *Schnarr v. State*, 2018 Ark. 333, 10, 561 S.W.3d 308, 315 (2018).

Spencer's prior and explicit rejection of the rule of law makes it more likely that, on October 8, he did not hold a reasonable belief that the use of deadly force was immediately necessary to prevent imminent death or serious physical injury to his daughter. Instead, his statements demonstrate adherence to a personal code under which he viewed the legal system as inadequate and believed he was entitled to impose lethal punishment on his own.

The evidence will show Spencer had multiple realistic opportunities to call 911 while continuing to follow Fosler and his daughter before ramming Fosler's truck and firing 16 rounds. His phone was unlocked and in active use.

His July 8 statements provide the motive for that deliberate choice: he had already announced that reliance on law enforcement and the courts was, in his view, "bullshit." This directly rebuts any suggestion that his failure to call police was the result of panic, incapacity, or a reasonable belief that law enforcement could not respond in time.

Arkansas Rule of Evidence 401 defines relevant evidence as evidence "having *any tendency* to make the existence of any fact that is of consequence … more probable or less probable than it would be without the evidence."

Spencer's declaration that citizens should be allowed to take the law into their own hands has a clear and powerful tendency to make it more probable that: (a) he acted with the prohibited mental state on October 8, and (b) he did not act with the reasonable belief required for justification.

In short, the July 8 statements are direct proof of Spencer's rejection of the very legal principles that stand between second-degree murder and a justified homicide. They are therefore relevant and admissible in the State's case-in-chief.

b. The Probative Value of Spencer's Statements Substantially Outweighs any Danger of Unfair Prejudice.

It is well settled that "[m]ost evidence is, by its very nature, prejudicial, and that evidence must be unfairly prejudicial to be excluded." *McDaniels v. State*, 2025 Ark. 139, at 12, 720 S.W.3d 82, 90. Only evidence that tends to suggest a decision on an improper basis, such as raw emotional reaction, is excludable. *Id.* The Arkansas Supreme Court has repeatedly emphasized that evidence offered by the State in a criminal prosecution "is likely to be prejudicial to the defendant to some degree, otherwise it would not be offered." *Dimas-Martinez v. State*, 2011 Ark. 515, at 24, 385 S.W.3d 238, 253. Accordingly, exclusion under Rule 403 is proper only when the defendant demonstrates that the danger of unfair prejudice substantially outweighs the evidence's probative value. *Id.*

The Supreme Court's application of this principle in *Dimas-Martinez* is instructive and strongly supports admission here. In that case, the Court upheld the introduction of evidence that the defendant, one month before a murder, possessed a loaded magazine containing the exact type of ammunition later used to kill the victim, even though the possession occurred during an unrelated traffic stop and had no connection to the homicide itself. *Id.* at 23–25, 385 S.W.3d at 252–53. The Court found the evidence probative of access and planning, and held that any incidental prejudice did not substantially outweigh that probative force.

The July 8 statements in Spencer's case are extensively more probative than the ammunition magazine in *Dimas-Martinez*. They are not remote or circumstantial; they are

Spencer's own rejection of the legal principle he later violated when he executed Michael Fosler. Just as the magazine tended to prove the defendant's ability and preparation to commit murder in *Dimas-Martinez*, Spencer's explicit contempt for the prohibition on vigilante justice directly proves his motive, intent, and absence of justification on October 8. If evidence from an unrelated traffic stop a month earlier cleared the Rule 403 hurdle, evidence of the defendant's own recorded philosophy of lawlessness uttered in the same investigation that gave rise to the homicide easily satisfies the balancing test. The State seeks admission only to prove Spencer's state of mind and to rebut justification, therefore no improper basis is invoked.

The danger of unfair prejudice is negligible; the probative value is overwhelming. Rule 403 does not require exclusion.

c. Spencer's Statements are Independently Admissible Under Arkansas Rule of Evidence 404(b).

Even if the statements were considered "other acts, wrongs, or crimes" evidence (which they are not, because expressing a belief as Spencer did is not itself criminal conduct), they are squarely admissible under the well-established 404(b) exception.

Arkansas Rule of Evidence 404(b) provides that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Id.*

Here, Spencer's recorded assertion that it is "bullshit" that citizens cannot take the law into their own hands is independent evidence of motive, intent, plan and knowledge, and absence of justification. It shows a pre-existing vigilante ideology that drove his actions and advance awareness that his course of conduct was illegal and that he proceeded anyway, and also disproves

that he did not act under a reasonable belief that deadly force was necessary, but instead pursuant to his previously announced contempt for the legal system.

III. CONCLUSION AND PRAYER FOR RELIEF

The Defendant's July 8, 2024, statements to Sergeant Ingram are relevant under Rule 401 because they make it substantially more probable that Spencer killed Fosler with the culpable mental state required for second-degree murder and without any lawful justification. Their probative value in revealing his mindset, motive, and intent far outweighs any danger of unfair prejudice under Rule 403. Independently, the statements are admissible under the Rule 404(b) exception as direct proof of motive, intent, plan, knowledge, and absence of mistake or justification. Because the statements satisfy Rules 401, 403, and 404(b) on every level, the Defendant's motion in limine must be denied.

WHEREFORE, the State requests this Court to deny the Defendant's motion, and allow this testimony to be elicited by the State in their case in chief as a statement by party-opponent and/or under Ark. R. of Evid. 404(b).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Maryann Byrd, Deputy Prosecuting Attorney, certify that a copy of the forgoing pleading has been e-filed and notice sent to Defendant's attorney of record this November 24, 2025.

/s/Maryann Byrd
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