

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
FIRST DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CASE NO. 43CR-24-551

AARON SPENCER

DEFENDANT

**BRIEF IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
SPENCER'S CONDUCT FROM JULY 2024 PURSUANT TO ARK. R. EVID. 401, 402,
403, 404, AND *ANDREW V. WHITE*, 220 L. Ed. 2d 340 (U.S. 2025)**

COMES NOW the Defendant Aaron Spencer by and through his attorney Michael Kiel of Lassiter & Cassinelli, and for his motion states:

Decedent Michael Fosler was charged with multiple felony counts for sexually assaulting Spencer's daughter in case number 43CR-24-383. Fosler was arrested on July 11, 2024, after Spencer's daughter made initial disclosures on July 8, 2024.

The State's discovery file contains a report from Lonoke County Sheriff's Office deputy John Ingram about a meeting with Leanna Higginbotham and her daughter Paula McFarlin on July 8, 2024. The report alleges Higginbotham and McFarlin told Ingram that Aaron Spencer had requested details about their "mutual friend" Michael Fosler, and that when Higginbotham and McFarlin asked Spencer why he wanted Fosler's information Spencer told them that Fosler had raped his teenaged daughter and allegedly begged for them not to call the police. Ingram's report then notes he spoke with Spencer at his residence, and that he was "extremely angry at first and refused to talk about the possible rape," but then "calm[ed] down and" cooperated fully with law enforcement's investigation into Fosler.

This Court must exclude any reference to or evidence about Spencer's conduct in July 2024 pursuant to Ark. R. Evid. 401, 402, 403, and 404(b).

Such evidence has no independent relevance and does not fall into any of the listed or known exceptions to Ark. R. Evid. 404(b)'s general proscription on character evidence. Further, any probative value that the evidence has—which Spencer does not concede—is grossly outweighed by the dangers of unfair prejudice and confusion of the issues.

The evidence is not relevant and is inadmissible pursuant to Ark. R. Evid. 401 and 402. Spencer's conduct in July 2024 has no bearing on whether his use of force against Fosler more than three months later in response to Fosler kidnapping, sexually abusing, and possibly eliminating his daughter as a witness in his own criminal case was justified. The evidence must be excluded as irrelevant accordingly.

Rule 404(b) of the Arkansas Rules of Evidence provides:

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.

Prior bad-acts evidence must be “independently relevant to the main issue – relevant in the sense of tending to prove some material point rather than merely to prove that the defendant is a criminal” *Lindsey v. State*, 319 Ark. 132, 138, 890 S.W.2d 584, 587 (1994) (citation omitted).

Even if relevant under Rule 404(b), evidence may still be excluded under Ark. R. Evid. 403 if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See, e.g., Williams v. State*, 2016 Ark. App. 507, 505 S.W.3d 234. The State is not entitled to introduce evidence of other offenses to persuade the jury that the accused is a criminal and thus likely to have committed the crimes he has been charged with. *Id.* at 6, 505 S.W.3d at 237-38 (citation omitted). Specifically, proof of other crimes is

never admitted when its only relevance is to show the defendant is a man of bad character and/or addicted to crime. *Id.* at 6, 505 S.W.3d at 238.

The evidence at issue has no independent relevance to the charged act. Whether Spencer asked associates of Fosler for information about Fosler more than three months prior to the charged acts in this case has no relevance to the charged acts. Whether Spencer was angry and/or initially refused to cooperate with law enforcement into the investigation of Fosler—an investigation he then cooperated with fully—has no relevance to the charged acts either.

Such evidence *may* be relevant if Spencer was alleged to have stalked Fosler and killed him at his home or out in public. However, that is not what happened here. Rather, Spencer awoke in the middle of night to find his teenaged daughter missing, and happened upon Fosler's truck as it turned down his (Spencer's) street while out searching for his daughter in his truck. Spencer was not looking for Fosler; rather, he was looking for his daughter. He just happened to find Fosler with his 14-year-old daughter mere months after Fosler's arrest for sexually abusing her. What followed was a lawful use of force in defense of his daughter and himself.

The issue here is whether Spencer validly used force in defense of his daughter and himself, not whether he had any specific intent to kill Fosler prior to the incident at issue. The evidence is inadmissible accordingly.

Instead, this evidence is the worst kind of propensity evidence meant to encourage the jury to find Spencer guilty in accordance with his character for having sought out Fosler's information to handle the issue himself, despite no actual proof of such, to encourage a vigilante narrative that is simply belied by the actual facts of the charged offense—rather than evidence associated with the charged offense. Any marginal relevance the evidence may have—which Spencer does not concede—is outweighed by the dangers of confusion of the issues and unfair

prejudice, and must be excluded pursuant to Rule 403 accordingly. The trial would become about whether Spencer had previously sought to handle Fosler himself in July 2024 rather than whether he was justified in killing Fosler in October 2024 following Fosler's abduction of his daughter. The State will be able to argue some sort of preexisting intent despite no alleged connection between Spencer's July 2024 comments and use of force against Fosler in October 2024. This Court must exclude the evidence pursuant to Rule 403 accordingly.

The evidence does not fit into any exception listed in Rule 404(b), and in fact is precisely the type of evidence that Rule 404(b) exists to keep out. Further, admission of this evidence would violate Spencer's due-process rights. *See Andrew*, 220 L. Ed. 2d at 342 (“[W]hen evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.”) (internal quotation omitted).

This Court must exclude the evidence at issue accordingly.

WHEREFORE the Defendant respectfully requests that this Court enter an order precluding the State from offering any evidence about his July 2024 conduct during the trial in this matter, or alternatively for a hearing whereby the State may specify which exception to Rule 404(b) it believes applies and where the Court may determine whether such evidence will be admissible in the jury trial.

Respectfully submitted,

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MICHAEL KIEL KAISER (2015001)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered on November 24, 2025, to Chief DPA John Huggins via eFiling.

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

MICHAEL KIEL KAISER (2015001)