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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA, Plaintiff, vs. ARLENA M WILLES, Defendant.	CR2019-005397-001 STATE'S NOTICE OF INTENT TO USE DEFENDANT'S OTHER CRIMES, WRONG OR ACTS PURSUANT TO RULE 404(b), ARIZONA RULES OF EVIDENCE (Assigned to the Honorable Geoffrey Fish)

The State of Arizona, by and through undersigned counsel, hereby supplements its notice filed August 19, 2019, with specific acts that the State intends to introduce of other crimes, wrongs, or acts committed by Defendant, pursuant to the Arizona Rules of Evidence, Rule 404(b). This Notice is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

The minor victim was the fifteen-year-old autistic son of Defendant. Prior to his hospitalization, he was homeschooled, unable to read, and he did not receive any services or treatment for autism. On October 27, 2017, Defendant brought him to Phoenix Children's Hospital (PCH) for blood in his stool that had been going on for a week. Victim had been seen in the PCH ER twice in early 2017 for similar GI issues (abdominal pain). Victim was released and directed to follow up with GI. Defendant did not do any kind of follow up on Victim's medical care. On January 10, 2018, Defendant brought Victim to PCH for chronic abdominal pain and vomiting. Victim was severely malnourished and was at risk for refeeding syndrome. At that time, Victim weighed only 63.9 lbs. He was diagnosed with Failure to Thrive, and the medical provider noted that he was only about two thirds of the weight he should be, and lab work showed he had been severely malnourished for years. Victim was hospitalized and had to be stabilized nutritionally before any procedures could be done.

Victim was discharged with follow up instructions. Defendant followed up once at the GI clinic at PCH and did not follow doctor recommendations. She gave him solid food and stopped giving him the prescribed medication.

On August 31, 2018, Defendant took Victim to Urgent Care with abdominal pain, diarrhea, and during his time there, a bowel movement that was "red liquid".

Defendant admitted she had discontinued the formula. Victim was given a blood transfusion on September 1, 2019. He was transferred to Thunderbird Hospital, and was found to be suffering from ulcerative colitis, could not eat and was very thin. He was having bloody stools and GI bleeding. The hospital recommended Victim start a steroid treatment. After initially agreeing, Defendant refused to let the hospital treat Victim with steroids.

On Sept 5, 2018, the Defendant left the hospital AMA. DCS was notified, and DCS Investigator Olivia Douma went to Defendant's home. Defendant initially did not want to let DCS into the home because then the investigator would "see how sick he was." Defendant stated she had made an appointment with a doctor approximately two weeks in the future. Victim was lying on the couch in pain. He said, "I don't want to die anymore", and told Defendant he wanted to go to the doctor. DCS observed Victim to be very thin with no muscle tone, and his eyes were sunken.

DCS followed them to the hospital in a taxi. Victim was severely malnourished and again diagnosed with failure to thrive. Defendant asked the medical providers multiple times to discharge Victim to a PCP, who she was working to get a referral for. Staff explained to Defendant that Victim was too malnourished and had untreated ulcerative colitis. On September 9, 2018, Defendant removed Victim's feeding line TPN and did not tell staff, and let it pour out onto the floor.

Additionally, Defendant told staff Victim was only having a few stools per day and would not allow them to measure them. Once Defendant was trespassed after becoming belligerent and combative with medical staff, they determined that Victim was having 2 liters of bloody stool per day and was screaming in pain during bowel movements. Victim ultimately needed a colectomy.

II. OTHER CRIMES, WRONGS, OR ACTS OF THE DEFENDANT

The State intends to introduce at trial any and all information about Defendant's complete isolation of Victim, including that he was receiving no services at the time he was hospitalized, from DDD or any other medical or other type of provider. He had not seen a primary care provider in a few years and had stopped all services in 2012. Victim was homeschooled and was barely literate. Defendant completely isolated Victim from all providers, school personnel, and anyone else who could see his physical condition deteriorating. The State intends to introduce this evidence to prove motive, intent to isolate the victim, and absence of mistake or accident.

III. LEGAL ARGUMENT

a. 404(b) Generally

Ariz. R. Evid. 404(b) states that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action 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. The profferer must prove by clear and convincing

evidence that the prior bad acts were committed, and that the defendant committed the acts. *State v. Terrazas,* 189 Ariz. 580, 582 (1997).

The admission of other-acts evidence is governed by four rules of evidence: (1) Ariz. R. Evid. 402 requires that the evidence be relevant; (2) Rule 404(b) requires that the evidence be admitted for a proper purpose; (3) Rule 403 requires that the danger of unfair prejudice not substantially outweigh probative value; and (4) Rule 105 requires that the judge give an appropriate limiting instruction upon request.

The state intends to introduce the "other acts" evidence listed above to prove motive and intent to isolate the victim and absence of mistake or accident. Defendant had a pattern of obstructing any kind of care for her son by anyone other than herself, including medical and psychological care. She terminated any services Victim received, did not take him to the doctor on a regular basis, did not enroll him in school, barely educated him at home, and isolated him in every way possible from anyone who could help him or see his deterioration.

This evidence is clearly relevant to Defendant's obstruction of care and failure to thrive in her current case, demonstrating that her actions in this matter were part of her intent to isolate and control Victim, going as far as repeatedly referring to Victim as her "biological property". Additionally, it will be used for a proper purpose to show motive, intent, and absence of mistake or accident.

The trial court must also determine that the probative value of the evidence is not substantially outweighed by its potential for unfair prejudice to comply with

Arizona Rule of Evidence 403. *Terrazas*, 189 Ariz. at 583. "Evidence is unfairly prejudicial only if it has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror." *State v. Gulbrandson*, 184 Ariz. 46, 61 (1995). The evidence is highly probative because it conveys Defendant's pattern of behavior. It is not unfairly prejudicial; because it is being introduced for the sole purpose to show the motive and intent of Defendant.

The State is not opposed to a limiting instruction, if requested. Arizona Rule of Evidence 105 requires that a "court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly." When allowing prior acts as evidence, the limiting instruction protects against unfair prejudice. *State v. Villalobos*, 225 Ariz. 74, 80, ¶ 20 (2010) ("Any prejudice from the admission of this evidence was appropriately mitigated by the instruction given at [the defendant's] request, which reminded the jury of the limited purposes for which it could consider the other acts evidence."); *State v. Hyde*, 186 Ariz. 252, 276–77 (1996) (a limiting instruction "afforded the defendant adequate protection against unfair prejudice"). The court can provide a limiting instruction that will serve as an additional safeguard against any unfair prejudice to Defendant.

Here, the evidence of Defendant's prior pattern of isolating behavior is admissible for proper purposes under Rule 404(b). These prior acts will pass the relevancy and balancing tests of Rules 402 and 403, and a limiting instruction can be offered if requested. Based on the foregoing, the State requests that it be permitted to elicit the other act testimony referenced above.

Submitted April ___, 2021.

ALLISTER ADEL
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BY:

/s/ Frankie Grimsman
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Copy mailed/delivered April ___, 2021, to:

The Honorable
Judge of the Superior Court

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