

BOISE, TUESDAY, AUGUST 10, 2021, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47764

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 ROD LEE FULTON,)
)
 Defendant-Appellant.)
)
 _____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael Reardon, District Judge.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

The State charged Rod Lee Fulton with rape, attempted strangulation, aggravated assault, and the use of a deadly weapon during the commission of a crime after his wife, L.F., reported Fulton forced her to have sex while holding a knife to her throat and later attempted to strangle her. Before trial, the State filed a notice of intent to admit evidence of prior bad acts of Fulton’s forcible sexual abuse of L.F. under Idaho Rule of Evidence 404(b). Fulton filed a motion in limine to exclude the evidence. The district court ruled that the evidence of prior bad acts would be admitted for the limited purpose of proving Fulton’s motive and L.F.’s lack of consent.

Pursuant to this ruling, L.F. testified at trial about two prior sexual encounters during which Fulton forced her to have sex. Fulton objected, and the district court overruled Fulton’s objection and gave the jury a limiting instruction. The jury found Fulton guilty of rape and attempted strangulation. Fulton appeals, arguing the district court erred by allowing L.F. to testify about the two prior incidents and contends the evidence is improper propensity evidence that should have been excluded under Rule 404(b).