

4-2022

## State v. Pelletier: *Protecting the Balance Between Montana Rules of Evidence 404 and 607*

Eric Monroe  
eric.monroe@umontana.edu

Follow this and additional works at: <https://scholarworks.umt.edu/mlr>



Part of the [Law Commons](#)

Let us know how access to this document benefits you.

---

### Recommended Citation

Eric Monroe, State v. Pelletier: *Protecting the Balance Between Montana Rules of Evidence 404 and 607*, 83 Mont. L. Rev. 171 (2022).

This Comment is brought to you for free and open access by the Alexander Blewett III School of Law at ScholarWorks at University of Montana. It has been accepted for inclusion in Montana Law Review by an authorized editor of ScholarWorks at University of Montana. For more information, please contact [scholarworks@mso.umt.edu](mailto:scholarworks@mso.umt.edu).

**STATE V. PELLETIER: PROTECTING THE BALANCE  
BETWEEN MONTANA RULES OF EVIDENCE  
404 AND 607**

**Eric Monroe\***

I. INTRODUCTION

The Montana Rules of Evidence restrict both the prosecution and defense in their ability to introduce evidence during a trial. This is initially observable under Montana Rule of Evidence 404, which limits the defense’s ability to introduce good character evidence by permitting the prosecution the right to rebuttal under Rule 404(a)(1).<sup>1</sup> Next, Montana Rule of Evidence 607 limits the prosecution from introducing testimony of witnesses who may lack credibility or have ulterior motives by allowing the defense the right to question the credibility of any witness.<sup>2</sup> Finally, Montana Rule of Evidence 403 allows the presiding judge to exclude relevant evidence if they determine that its “probative value is substantially outweighed by the danger of unfair prejudice.”<sup>3</sup> In *State v. Pelletier*,<sup>4</sup> the Montana Supreme Court re-examined these rules of evidence when appellant Shane Pelletier argued on appeal from a conviction for sexual intercourse without consent (“SIWC”) that the rules had been improperly applied.<sup>5</sup>

This note analyzes the relationship between these rules of evidence and the intended balance between the prosecution and defense. Part II discusses the relevant background law. Part III provides *Pelletier*’s relevant facts, while Part IV states the Montana Supreme Court’s holding—summarizing the majority’s reasoning and Justice James Rice’s dissent. Part V analyzes the Court’s reasoning and decision in *Pelletier*, focusing on the relevant issues of character evidence and witness credibility. Finally, Part VI concludes that, while the Montana Supreme Court was correct in its decision to protect a defendant’s right under Rule 607 to question the credibility of witnesses, it should not have moved away from prior precedent when it limited the scope of Rule 404(a)(1) to only allow demonstrably true evidence to rebut good character testimony.

---

\* J.D. Candidate, Class of 2023, Alexander Blewett III School of Law at the University of Montana.

1. MONT. R. EVID. 404.

2. MONT. R. EVID. 607.

3. MONT. R. EVID. 403.

4. 473 P.3d 991 (Mont. 2020).

5. *Id.* at 995.

## II. BACKGROUND

The Montana Rules of Evidence were first adopted by the Montana Supreme Court on December 29, 1976.<sup>6</sup> Changes to Montana's evidence rules were born out of a change in the Federal Rules of Evidence two years prior. In 1973, the U.S. Supreme Court proposed a set of uniform federal rules of evidence which Congress later enacted on January 2, 1975.<sup>7</sup> During this process, Montana lawyers petitioned the Montana Supreme Court to create a commission that would review the existing Montana Code of Evidence and make recommendations for revisions to the laws where needed.<sup>8</sup> On April 4, 1974, the Montana Supreme Court created the Commission to unify Montana law with the Federal Rules where possible—while retaining Montana law when desirable.<sup>9</sup> Since initial adoption in 1977, the Montana Rules of Evidence have remained substantially unchanged except for minor alterations to wording.<sup>10</sup>

The introduction of character evidence evolved out of a recognition that the defense has a right to introduce evidence about pertinent character traits that conflict with the alleged crimes of the accused.<sup>11</sup> While traditionally character evidence is inadmissible, Rule 404(a)(1) is a codified exception that permits evidence of a defendant's or victim's pertinent character trait.<sup>12</sup> However, the Rule recognizes that it would be unjust to allow one side to provide testimony about good character traits without allowing the other side to contest them.<sup>13</sup>

Thus, the exceptions come into play.<sup>14</sup> Only after the defendant introduces evidence of their good character through personal accounts or witness testimony has the “door been opened,” and the State is then allowed to rebut this evidence by questioning the defendant or witness about pertinent prior acts which conflict with this testimony.<sup>15</sup> It is therefore left up to the defendant and their attorney to decide whether or not they want to introduce evidence of the defendant's character, thereby affording them the ability to prevent the process of character testimony and rebuttal altogether.<sup>16</sup>

---

6. Cynthia Ford, *A Short History of the MT Rules of Evidence*, 38 MONT. L. REV. 14, 14 (2012), <http://perma.cc/PPU5-EGXG>.

7. *Id.*

8. *Id.* at 14–15.

9. *Id.* at 15.

10. *Id.* at 16–17.

11. David Crump, *An Edifice of Misshapen Stones: Interpreting Federal Rule of Evidence 404(a)*, 43 HOFSTRA L. REV. 667, 670 (2015).

12. Lori J. Henkel, Annotation, *Admissibility of Evidence of Pertinent Trait Under Rule 404(a) of the Uniform Rules of Evidence*, 56 A.L.R.4TH 402, § 2(a) (1987).

13. Crump, *supra* note 11, at 673.

14. MONT. R. EVID. 404.

15. Crump, *supra* note 11, at 672.

16. *Id.* at 675.

While it is wholly the defendant and their attorney's decision whether or not to introduce character evidence, thereby opening themselves up to potential rebuttal, Rule 607(a) allows any party to attack the credibility of a witness for either side.<sup>17</sup> Under Rule 607(a) the defense or prosecution can attack a witness's credibility due to a lack of capacity to perceive, recollect, or communicate any matter concerning testimony.<sup>18</sup>

### III. FACTS

On July 5, 2017, a 20-year-old female ("M.V.") was drinking with friends at Caras Park in Missoula around 11:00 p.m.<sup>19</sup> M.V. was "extremely intoxicated following several giant swigs of whiskey."<sup>20</sup> While walking towards the tent area of the park, M.V. ran ahead of the group.<sup>21</sup> She was not present when the group arrived at the tent area, and they were unable to locate her. Shane Pelletier found M.V. vomiting in a city parking garage across from his downtown apartment near midnight. After rejecting his first offer of assistance, M.V. ultimately accepted Pelletier's offer to come to his apartment for food and water to sober up.<sup>22</sup> Video surveillance from the parking garage captured the two walking across the street.<sup>23</sup>

M.V. and Pelletier's accounts vary significantly after leaving the parking garage, but both agree that sexual intercourse eventually occurred.<sup>24</sup> Pelletier claims that after arriving at his apartment, M.V. showered, drank water, and ate.<sup>25</sup> While Pelletier initially claimed during questioning that M.V. initiated the sexual encounter by kissing him, he subsequently changed his story, stating that he awoke with M.V. on top of him engaged in intercourse.<sup>26</sup> M.V. testified that she remembered little from that night. However, she recalled waking up in an unfamiliar apartment with a stranger on top of her and engaged in intercourse.<sup>27</sup> In the morning, M.V. remembered waking to Pelletier standing over her attempting to put his penis in her mouth. She recalled pushing Pelletier away which caused him to become "flustered" and "panicked."<sup>28</sup> M.V. took her clothes and left Pelle-

---

17. MONT. R. EVID. 607.

18. MONT. R. EVID. 607 cmt. 4.

19. State v. Pelletier, 473 P.3d 995, 995 (Mont. 2020).

20. *Id.*

21. *Id.* at 996.

22. *Id.*

23. *Id.* at 996 n.1.

24. *Id.* at 996.

25. *Id.*

26. *Id.* at 996–97.

27. *Id.* at 996.

28. *Id.*

tier's apartment.<sup>29</sup> After leaving, M.V. told two friends and her boyfriend that she had been raped and could not recall what happened. At the urging of her boyfriend, M.V. reported the alleged rape to the police around 5:00 p.m. Subsequent DNA analysis confirmed the presence of Pelletier's semen in her vagina.<sup>30</sup>

On August 23, 2017, the State charged Pelletier under Montana Code Annotated § 45-5-503, for subjecting M.V. to SIWC.<sup>31</sup> During the trial, Pelletier testified that he was "not that kind of guy" and "would never do that to a female," prompting the State to assert its intent to cross-examine Pelletier about a prior allegation of SIWC from 2003.<sup>32</sup> The State argued that Pelletier's comments put his character at issue; therefore, Rule 404(a)(1) permitted rebuttal of his good character testimony with the evidence of a prior allegation. The district court determined that the State could briefly examine Pelletier regarding the 2003 allegation.<sup>33</sup>

Although the district court allowed in the 2003 allegation, it precluded Pelletier from impeaching M.V.'s testimony with evidence of her marijuana use prior to reporting the alleged offense.<sup>34</sup> Before filing the police report, M.V. and her boyfriend ingested concentrated tetrahydrocannabinol ("THC") tablets which significantly elevated the level of THC in her system.<sup>35</sup> Pelletier moved to introduce M.V.'s unredacted toxicology report and testimony from her boyfriend of their marijuana use prior to making the report.<sup>36</sup> The defense argued that this was relevant to "her demeanor . . . and recall" while the State objected, arguing it was irrelevant to the matter at issue.<sup>37</sup> The court ruled that absent expert testimony about the effects of marijuana, the introduction of M.V.'s use of marijuana was irrelevant.<sup>38</sup>

Prior to the cross-examination of Pelletier, the court instructed the jury that evidence of this allegation was only for the purpose "to impeach the Defendant's testimony concerning his good character" and was not intended as evidence of his guilt in the current case.<sup>39</sup> Subsequently, the State asked Pelletier whether he had been investigated in 2003 for SIWC, to which he responded he had.<sup>40</sup> After a three-day trial, the jury found Pelletier guilty of

---

29. *Id.*

30. *Id.*

31. *Id.* at 995.

32. *Id.* at 997.

33. *Id.*

34. *Id.* at 1004.

35. *Id.* at 1004–05.

36. *Id.* at 1005.

37. *Id.* at 1004.

38. *Id.*

39. *Id.* at 997–98.

40. *Id.* at 998.

2022

STATE V. PELLETIER

175

SIWC and the court sentenced him to 40 years with 20 years suspended.<sup>41</sup> On appeal, the Montana Supreme Court held that the district court had abused its discretion by allowing the State to cross-examine Pelletier about the 2003 allegation as Rule 404(a)(1) rebuttal evidence. Additionally, it ruled that the blanket exclusion of M.V.'s next-day marijuana use for the limited Rule 607(a) impeachment purpose was an abuse of discretion.<sup>42</sup> It reversed the decision and remanded for a new trial.<sup>43</sup>

#### IV. HOLDING

##### A. Justice Sandefur's Majority Opinion

Pelletier argued on appeal that the State's cross-examination concerning the 2003 allegation under Rule 404(b) was too remote in time to have significant probative value relative to its inherently prejudicial nature, and therefore violated Rule 403.<sup>44</sup> Additionally, he argued that the district court erred in precluding him from impeaching M.V.'s testimony with evidence of marijuana use prior to reporting.<sup>45</sup> Concerning the violation of Rule 404(b), the Court found that the district court's allowance of Pelletier's cross-examination regarding the 2003 allegation fit under the exception in Rule 404(a)(1), which allows for the rebutting of good character evidence, and therefore did not violate Rule 404(b).<sup>46</sup> However, the Court found that because the 2003 SIWC allegation was "unsubstantiated" and the "truth of the 15-year-old allegation was not ascertainable," it had at most only minimal probative value for rebutting Pelletier's good character testimony and consequently failed the Rule 403 balancing test because the probative value for which it was offered under Rule 404(a)(1) was substantially outweighed by its prejudice.<sup>47</sup> Therefore, the Court held that the district court abused its discretion by allowing the State to cross-examine Pelletier regarding the allegation as it was unfairly prejudicial under the circumstances of the case.<sup>48</sup>

In considering whether M.V.'s marijuana use should have been admissible, the Court looked to its prior decision<sup>49</sup> in *State v. Polak (Polak II)*.<sup>50</sup> In *Polak II*, the Court determined that evidence that a witness used drugs or

---

41. *Id.*

42. *Id.* at 1007.

43. *Id.*

44. *Id.* at 1000–01.

45. *Id.* at 1005.

46. *Id.* at 1000–01.

47. *Id.* at 1002–03.

48. *Id.* at 1003.

49. *Id.* at 1006.

50. 422 P.3d 112, 117 (Mont. 2018).

alcohol prior to observing or hearing an event is generally inadmissible for impeachment purposes under Rule 607.<sup>51</sup> However, if the evidence shows that a witness appeared impaired as a result of the alcohol or drugs when recalling or communicating the events, a party may impeach the witness's credibility under Rule 607(a).<sup>52</sup> Prior to filing a police report, a toxicology screen of M.V.'s blood showed a significant level of THC.<sup>53</sup> The State acknowledged that M.V. and her boyfriend ingested concentrated THC tablets prior to making the report, resulting in significantly elevated levels of THC in M.V.'s system.<sup>54</sup> The Court reasoned that similar to *Polak II*—in which the witness for the prosecution had used methamphetamine prior to witnessing and reporting a crime—M.V.'s drug use could have impacted her recollection of the crime.<sup>55</sup> Therefore, as the case primarily relied on M.V.'s testimony, her drug use was highly relevant under Rule 607(a) and should have been admitted.<sup>56</sup> As a result of the district court abusing its discretion by allowing the State to cross-examine Pelletier regarding his 2003 allegation, the Court reversed his conviction and remanded for a new trial.<sup>57</sup>

### B. Justice Rice's Dissenting Opinion

Although Justice Rice agreed with the majority concerning the exclusion of M.V.'s marijuana use, he argued that the Court's holding concerning admissible pertinent bad character trait evidence was a novel application of Rule 404(a)(1) inconsistent with the Rule's wording and the Court's prior precedent.<sup>58</sup> He reasoned that the Court had never interpreted Rule 404(a)(1) to mean that only evidence that was demonstrably true or substantiated was permitted when cross-examining a defendant about prior bad act evidence.<sup>59</sup> Justice Rice argued that there was no such limitation in the wording of the Rule and that the Court's prior cases support the proposition that prosecutors can cross-examine witnesses for the accused concerning rumors or reports which rebut good character testimony.<sup>60</sup> While he conceded that this is slightly different than a defendant's testimony regarding his own character, Justice Rice argued that the Rule operates in the same

---

51. *Pelletier*, 473 P.3d at 1004 (citing *Polak II*, 422 P.3d at 117).

52. *Id.* at 1004–05.

53. *Id.* at 1003.

54. *Id.* at 1003–04.

55. *Id.* at 1005–06.

56. *Id.* at 1006.

57. *Id.* at 1007.

58. *Id.* (Rice, J., dissenting).

59. *Id.*

60. *Id.* at 1007–08. See also *State v. Moorman*, 321 P.2d 236, 239–40 (Mont. 1958); MONT. R. EVID. 404 cmt. 4.

manner for both witnesses and defendants.<sup>61</sup> He believed Pelletier's statement conveying that he would "never" do such a thing opened the door for the State's cross-examination of relevant prior allegations, and that in reversing the district court's decision, Pelletier was free on retrial to proclaim his virtuous character with no fear of contradictory evidence being introduced.<sup>62</sup>

## V. ANALYSIS

The Court's holding that the State's cross-examination of Pelletier regarding the 2003 allegation was improper does not follow prior precedent and limits the intended scope of Rule 404(a)(1).<sup>63</sup> However, the Court's holding that the district court abused its discretion when it excluded all evidence of M.V.'s next-day marijuana use prior to making a police report is the correct interpretation of the scope of Rule 607(a) and is in line with prior precedent.<sup>64</sup> As the current holding stands, Pelletier is free to offer good character testimony during his retrial without any fear of the State introducing rebuttal evidence.<sup>65</sup> Additionally, Pelletier may introduce evidence that questions the reliability of the State's only witness.<sup>66</sup> This decision alters the balance between these Rules, which were originally intended to afford both sides an equal opportunity to rebut and question testimony, and now gives a significant advantage to the defense.

### A. *The Prosecution's Position Made Harder*

Prior to the decision in *Pelletier*, defendants and their attorneys were left with a complicated choice when deciding whether or not to initiate the use of character evidence.<sup>67</sup> Under Rule 404(a)(1), the defense has the power to prevent evidence of a defendant's bad character from being admitted by electing not to introduce evidence of the defendant's good character.<sup>68</sup> However, if the defense elects to introduce evidence of the defendant's good character, the prosecution may counter by introducing contradictory character evidence.<sup>69</sup> This provides the jury with a balanced perspective and allows them to weigh both sides in order to reach an impartial conclusion. The decision in *Pelletier* alters the balance of this Rule by

---

61. *Pelletier*, 473 P.3d at 1008.

62. *Id.*

63. *Id.* at 1007 (majority).

64. *Id.*

65. *Id.* at 1008.

66. *Id.* at 1007.

67. Crump, *supra* note 11, at 689.

68. MONT. R. EVID. 404.

69. *Id.*

adding the additional burden to the prosecution of only countering character evidence with evidence that is demonstrably true rather than the traditional interpretation which is simply evidence that is “relevant.”<sup>70</sup> This interpretation of the Rule breaks from prior precedent and gives a significant advantage to the defense.

Before *Pelletier*, a defendant’s tactic of using self-serving testimony to dispute allegations was balanced with the prosecution’s right to rebuttal under Rule 404(a)(1). This is demonstrated by *State v. Austad*,<sup>71</sup> where the Court affirmed a defendant’s conviction after the prosecution introduced his prior felony burglary conviction to rebut his personal, good character evidence that he had “never burglarized any place.”<sup>72</sup> Austad argued that the State induced his response about his good character and that he had not offered up this evidence willingly.<sup>73</sup> This reasoning did not persuade the Court: “His answer, despite the fact that it was elicited by a question from the State, was clearly an offer of a pertinent trait of his character.”<sup>74</sup> Consequently, Rule 404(a)(1) opened the door for the State to introduce rebuttal evidence.<sup>75</sup> Similarly, in *Pelletier*, the defendant willingly—and under no obligation—introduced evidence of his good character.<sup>76</sup> When the defense asked Pelletier to clarify why he had given conflicting details to the police, Pelletier chose to add, “I’m just not that kind of guy. I would never do that to a female.”<sup>77</sup> In compliance with Rule 404(a)(1) and past precedent of its interpretation, Pelletier’s statement opened the door for the prosecution to cross-examine him regarding the prior SIWC allegation. Regardless of the truth of this evidence, it is pertinent to Pelletier’s good character testimony as it directly rebuts his declaration that he “would never do that to a female.”<sup>78</sup>

Additionally, in *State v. Clark*,<sup>79</sup> the Court considered events similar to *Pelletier* in which the jury was tasked with resolving contradictory testimony between the defendant and the victim.<sup>80</sup> During testimony, Clark provided statements to explain away past conduct and give the impression to the jury that he was a “peaceful, honest man.”<sup>81</sup> The prosecution then rebutted this evidence by introducing threatening letters Clark had written to his

---

70. *Pelletier*, 473 P.3d at 1007–08 (Rice, J., dissenting).

71. 641 P.2d 1373 (Mont. 1982).

72. *Id.* at 1383–84.

73. *Id.* at 1383.

74. *Id.* at 1384.

75. *Id.*

76. *State v. Pelletier*, 473 P.3d 995, 997 (Mont. 2020).

77. *Id.*

78. *Id.*

79. 682 P.2d 1339 (Mont. 1984).

80. *Id.* at 1349.

81. *Id.* at 1350.

wife.<sup>82</sup> Clark argued that these letters were outside the scope of rebuttal evidence afforded by Rule 404(a)(1) and that their introduction confused and prejudiced the jury against him.<sup>83</sup> The Court disagreed, holding that Rule 404(a)(1) is broad in its use and “applies to documentary evidence as well as to testimony.”<sup>84</sup> Additionally, the Court held that the introduction of psychological reports that the defendant had falsified was also permitted under Rule 404 because the case relied primarily on the testimony of the defendant and the victim.<sup>85</sup> This evidence was pertinent to the defendant’s honesty.<sup>86</sup> First, this decision illustrates the broad applicability of Rule 404 and the Court’s hesitance to limit its scope. Second, it emphasizes the importance the Court places on the use of Rule 404 evidence in cases that rely primarily on the testimony of the victim and the accused alone. Finally, it underscores the significance the decision in *Pelletier*, which deviates from the prior interpretation of Rule 404 evidence,<sup>87</sup> will have on future character testimony.<sup>88</sup>

The decision in *Pelletier* will have a profound effect on the use of Rule 404 in future cases. Through the limitation imposed on the use of Rule 404, prosecutors will likely only be able to introduce factually true evidence, thereby eliminating their ability to introduce prior allegations or bad act evidence unless the defendant was convicted. This tips the balance significantly in favor of the defense, allowing the introduction of uncorroborated personal statements about a defendant’s good character while burdening opposing counsel with additional restrictions outside of the scope of Rule 404 which limit the ability to rebut.

### B. *The Defense’s Position Made Easier*

Just as courts have traditionally interpreted the use of Rule 404 broadly to rebut character evidence, so too have they broadly interpreted Rule 607(a),<sup>89</sup> which allows either party to question the credibility of a witness.<sup>90</sup>

In *Pelletier*, the district court precluded the defendant from introducing evidence questioning M.V.’s reliability as a witness due to high levels of THC in her system at the time of making the report.<sup>91</sup> The district court

---

82. *Id.* at 1349.

83. *Id.* at 1347–48, 1350.

84. *Id.* at 1350.

85. *Id.*

86. *Id.*

87. MONT. R. EVID. 404 cmt. 4.

88. *State v. Pelletier*, 473 P.3d 995, 1007–08 (Mont. 2020) (Rice, J., dissenting).

89. Barbara J. Van Arsdale, *Propriety, Under Uniform Rule of Evidence 607, of Impeachment of Party’s Own Witness*, 3 A.L.R.6TH 269, § 11 (2005).

90. MONT. R. EVID. 607.

91. *Pelletier*, 473 P.3d at 1004.

ruled that—absent expert testimony on the physiological effects of marijuana—the introduction of M.V.’s toxicology report was irrelevant to her credibility as a witness.<sup>92</sup> On appeal, the Montana Supreme Court correctly held this decision to be an abuse of discretion.<sup>93</sup> Under Montana Rule of Evidence 611(b)(1), matters affecting the credibility of a witness are open to cross-examination.<sup>94</sup> A witness’s mere use of drugs alone is not enough to question a witness’s credibility.<sup>95</sup> However, evidence indicating that a witness was using drugs at the time of witnessing events “is admissible on cross-examination to impeach the witness’s ability to accurately perceive events.”<sup>96</sup> M.V. not only used marijuana leading up to the alleged offense, but she also consumed a significantly high dose just prior to reporting it.<sup>97</sup>

The use of marijuana can impact one’s ability to recall events accurately,<sup>98</sup> damaging their credibility as a witness and opening them up to an attack under Rule 607(a).<sup>99</sup> Montana law prohibits vehicle operation when more than five nanograms per milliliter of THC is present in the blood.<sup>100</sup> At the time of her report, M.V. had a blood THC level almost six times over that limit.<sup>101</sup> Marijuana research has shown that high levels of THC consumption results in proportionately greater memory impairment and recall.<sup>102</sup> M.V.’s marijuana use was therefore pertinent to her credibility as a witness as it called into question her ability to “recollect, or to communicate any matter about which [she] testifies.”<sup>103</sup> Accordingly, the Montana Supreme Court was correct to rely on past precedent, specifically *Polak II*, when it upheld the right of a defendant to introduce evidence questioning the credibility of a witness.<sup>104</sup>

## VI. CONCLUSION

The ability to rebut a party’s character evidence under Rule 404 and the ability to call into question the testimony of a witness under Rule 607 serve to strike a balance between the defense and prosecution. Rule 404(a)(1) prevents the defense from having the advantage of making end-

92. *Id.*

93. *Id.* at 1007.

94. MONT. R. EVID. 611.

95. *Pelletier*, 473 P.3d at 1004 (citing *State v. Polak*, 422 P.3d 112, 117 (Mont. 2018)).

96. *State v. Sorenson*, 619 P.2d 1185, 1191–92 (1980).

97. *Pelletier*, 473 P.3d at 1003–04.

98. Tabea Schoeler & Sagnik Bhattacharyya, *The Effect of Cannabis Use on Memory Function*, 4 SUBSTANCE ABUSE & REHAB. 11, 11–23 (2013), <https://perma.cc/F48C-F7K8>.

99. MONT. R. EVID. 607.

100. MONT. CODE ANN. § 61-8-411 (2019).

101. *Pelletier*, 473 P.3d at 1003 n.11.

102. Schoeler & Bhattacharyya, *supra* note 98, 12–13.

103. MONT. R. EVID. 607 cmt. 4.

104. *Pelletier*, 473 P.3d at 1007.

2022

STATE V. PELLETIER

181

less personal statements regarding a defendant's good character by affording the prosecution the right to rebut those statements with conflicting evidence.<sup>105</sup> Conversely, Rule 607 prevents the prosecution from utilizing witness testimony from individuals who lack credibility or who may have ulterior motives by allowing the defense to question the witness's credibility.<sup>106</sup> However, following the decision in *Pelletier*, this balance shifted in favor of the defense by first limiting the scope of Rule 404, thereby restricting the prosecution's response, and next reinforcing the defense's right to question the credibility of witnesses.<sup>107</sup> While the Court was correct to uphold a defendant's rights under Rule 607, it should not have moved away from prior precedent by limiting the scope of Rule 404.

---

105. MONT. R. EVID. 404.

106. MONT. R. EVID. 607.

107. *Pelletier*, 473 P.3d at 1007.

