

Braswell v. State 2018 WL 1719443

•52 The post-conviction court found that the prosecutor's statements were "highly inappropriate," and we agree. Although the trial court found that the Petitioner's prior incidents of violence against the victim and Ms. Woods were admissible to establish intent and the absence of mistake, the prosecutor did not argue that these prior bad acts established the Petitioner's intent to kill the victim or the absence of mistake. Rather, the prosecutor's statements constituted a blatant attempt to show the Petitioner's propensity to commit intentional, premeditated murder of the victim through manual strangulation based upon his prior conduct in choking the victim and Ms. Woods when he became angry.

Tennessee Rule of Evidence 404(b) clearly prohibits the admission of evidence of prior bad acts to establish a defendant's propensity to commit the charged offense, and the prosecutor's argument to the jurors that they may consider the Petitioner's prior bad acts for this purpose was extremely improper. Trial counsel testified that he did not object to the prosecutor's argument because he believed that the argument was not improper, a belief that was clearly erroneous. Therefore, trial counsel was deficient in failing to object to the prosecutor's remarks during her opening statement.