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State v. Padilla Respondent's Brief Dckt. 38899

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 TARANGO DEFOREST PADILLA,)
)
 Defendant-Appellant.)

NO. 38899, 38890

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS

HONORABLE G. RICHARD BEVAN
District Judge

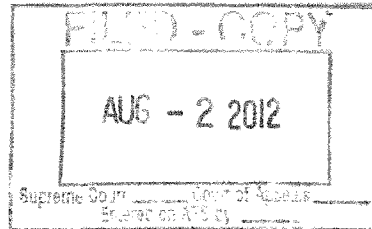
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STATEMENT OF THE CASE

Nature Of The Case

Tarango Deforest Padilla appeals from the judgment entered upon the jury verdicts finding him guilty of two counts of grand theft and a persistent violator enhancement. Padilla contends the district court committed error in one of its evidentiary rulings.

Statement Of Facts And Course Of Proceedings

At around 2:30 a.m. on August 7, 2009, Officer Matthew Gonzales, who was on routine patrol driving through an alley, saw Padilla and attempted to make contact with him. (Trial Tr., p.70, L.15 – p.73, L.13.) As Officer Gonzales started to get out of his patrol car, Padilla began to run. (Trial Tr., p.73, Ls.14-18.) Officer Gonzales requested back-up and Padilla was subsequently found nearby lying on the ground under a tree. (Trial Tr., p.77, Ls.13-17; p.59, Ls.5-23.) A search of Padilla and the areas surrounding where he was pursued and ultimately detained uncovered “several items,” including ceramic pieces from a spark plug, a flashlight, and financial transaction cards that did not belong to Padilla. (Trial Tr., p.78, L.21 – p.79, L.23; p.94, Ls.16-25.) Two of the cards belonged to Jamie Labrum and one to Thomas Mauch. (Trial Tr., p.80, Ls.2-11; Exhibits 2, 3.) Law enforcement subsequently made contact with Ms. Labrum and Mr. Mauch and both confirmed that they left their financial transaction cards in their cars the night before and confirmed that they were missing. (See generally Trial Tr., pp.33-38 (testimony of Mr. Mauch); pp.47-49 (testimony of Ms. Labrum).) Mr. Mauch and Ms. Labrum also denied knowing Padilla or giving

him permission to use their cards. (Trial Tr., p.33, Ls.9-11; p.40, Ls.15-18; p.46,Ls.21-23; p.50, L.24 – p.51, L.3.)

The state charged Padilla with grand theft in Case No. CR-09-8325 for the theft of the transaction card from Mr. Mauch (R., pp.46-47), and with grand theft in Case No. CR-09-13710 for the theft of the transaction cards from Ms. Labrum (R., pp.421-22). The state also alleged Padilla is a persistent violator. (R., pp.85-87.) The grand theft cases were consolidated for trial. (R., pp.142-46, 443-47.)

On the first day of trial, prior to any witness testimony, Padilla objected to the introduction of evidence relating to the pieces of ceramic spark plug¹ and a flashlight found at the time of his arrest. (Trial Tr., p.20, Ls.7-19.) Padilla argued the evidence was “irrelevant to the charge,” claiming “[t]here is no nexus between the grand theft charges and the -- and these purported items.” (Trial Tr., p.20, Ls.15-19.) Padilla also argued the evidence “would be unfairly prejudicial and potentially inflammatory.” (Trial Tr., p.20, Ls.21-24.) Padilla’s prejudice argument was based on his assertion that the state would introduce the evidence “to try to imply . . . that [he] is not only guilty in the state’s mind of the grand theft by possession of financial transaction cards but, also . . . guilty of burglarizing vehicles,” which he claimed “would be presented in order to imply guilt on matters that are not charged.” (Trial Tr., p.21, Ls.4-13.) The court overruled Padilla’s objection. (Trial Tr., p.26, L.3 – p.29, L.14.)

¹ Consistent with the prosecutor’s pre-trial representation regarding the significance of the pieces of ceramic spark plug found in Padilla’s possession, Officer Gonzales testified that the pieces could be used to break car windows. (Trial Tr., p.22, L.18 – p.23, L.6; p.87, Ls.5-11.)

The jury found Padilla guilty of both grand theft charges as well as the persistent violator enhancement. (R., pp.315-17, 493-95, 631-32.) The court imposed concurrent unified 15-year sentences with seven years fixed. (R., pp.338-41, 638-41.) Padilla filed a Rule 35 motion, which the court denied. (R., pp.346-48, 366-69, 644-46, 664-67.) Padilla filed a timely notice of appeal in both cases and the cases were consolidated for purposes of appeal. (R., pp.350-53, 364-65, 648-51, 662-63.)

ISSUE

Padilla states the issue on appeal as:

Did the district court err when it denied Mr. Padilla's motion in limine to prevent the State from presenting testimony or evidence about broken pieces of a spark plug and a flashlight because the evidence was both irrelevant and unfairly prejudicial?

(Appellant's Brief, p.5.)

The state rephrases the issue on appeal as:

Has Padilla failed to show error in the district court's conclusion that the spark plug and flashlight evidence was both relevant and not unfairly prejudicial given the nature of the offenses with which Padilla was charged?

ARGUMENT

Padilla Has Failed To Establish The District Court Erred In Denying His Motion To Exclude Relevant Evidence

A. Introduction

Padilla contends the district court erred in allowing “testimony or evidence of a spark plug and a flashlight because such evidence/testimony would be both irrelevant and unfairly prejudicial” and should have been excluded under I.R.E. 404(b). (Appellant’s Brief, p.6.) Padilla’s claim fails because his possession of items that could be used to aid him in stealing items from cars, which is what he did in this case, is not prohibited by I.R.E. 404(b). Rather, as the district court found, the evidence was properly admitted as part of the res gestae of the charged offenses and was relevant to Padilla’s intent. Notwithstanding Padilla’s claims to the contrary, the district court also correctly concluded the evidence was not unfairly prejudicial.

B. Standard Of Review

Rulings under I.R.E. 404(b) are reviewed under a bifurcated standard: whether the evidence is admissible for a purpose other than propensity is given free review while the determination of whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice is reviewed for an abuse of discretion. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009). When the appellate court reviews an evidentiary ruling for abuse of discretion, it conducts “a multi-tiered inquiry, examining 1) whether the lower court rightly perceived the issue as one of discretion, 2) whether the court

acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices, and 3) whether the court reached its decision by an exercise of reason.” State v. Hoak, 147 Idaho 919, 921, 216 P.3d 1291, 1293 (Ct. App. 2009) (citation omitted).

C. Padilla Has Failed To Show Error In The District Court’s Ruling Allowing Evidence That Padilla Possessed Tools That Would Aid Him In His Thefts

In overruling Padilla’s objection to evidence that he possessed ceramic spark plugs and a flashlight, the district court concluded such evidence was relevant and that the challenged items did not constitute “bad acts” under I.R.E. 404(b), but were “part of the res gestae, [and] temporally connected.” (Trial Tr., p.26, L.16 – p.28, L.17.) The court also rejected Padilla’s argument that the evidence was unfairly prejudicial under I.R.E. 403. (Trial Tr., p.28, L.18 – p.29, L.5.)

1. The Pieces Of Ceramic Spark Plug

Padilla argues that the district court erred in allowing evidence of his possession of pieces of a ceramic spark plug, claiming that because “[p]ossession of burglary tools is a violation of Idaho Code § 18-1406 and constitutes a misdemeanor,” it is a “bad act” subject to exclusion under I.R.E. 404(b). (Appellant’s Brief, p.11.) That possession of burglary tools is itself chargeable conduct does not convert evidence that Padilla possessed burglary tools while committing theft into evidence of other crimes, wrongs or acts subject to exclusion under I.R.E. 404(b). If that were true then any time a defendant entered a building to commit any theft or felony, and then committed a theft or

some other felony, the state would not be able to introduce evidence of the unlawful entry unless it also charged the defendant with burglary. I.C. § 18-1401. Surely I.R.E. 404(b) was not intended to compel the state to charge as many crimes as possible arising from a single occurrence in order to ensure it could present all evidence of a defendant's activities directly associated with the charged offense. The district court correctly concluded as much in determining that Padilla's possession of pieces of ceramic spark plug was "not 404(b)" but was "part of the res gestae" and "temporally connected" to the charged offenses. See State v. Blackstead, 126 Idaho 14, 17-18, 878 P.2d 188, 191-92 (1994) (citations omitted) (defining res gestae as the "whole of the transaction under investigation and every part of it," adopting the rule that the "state is entitled to present a full and accurate account of the circumstances of the commission of the crime, and if such an account also implicates the defendant or defendants in the commission of other crimes for which they have not been charged, the evidence is nevertheless admissible," and concluding defendant's drug use in conjunction with molestation was admissible because it was "inextricably connected with the charged sex offense").

Even if Padilla's possession of pieces of ceramic spark plug is subject to a 404(b) analysis, the evidence was relevant and admitted for a proper purpose under the rule. While Padilla correctly notes that both Mr. Mauch and Ms. Labrum testified that their cars were unlocked such that there was no damage done in terms of forced entry, Padilla's possession of "tools" that could have aided him in gaining access to a locked car was relevant to his intent and

preparation. I.R.E. 404(b) (evidence of other crimes, wrongs, or acts admissible to show “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident”); State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989) (Evidence that tends to prove the existence of a fact of consequence in the case, and has any tendency to make the existence of that fact more probable than it would be without the evidence is relevant.). This is especially true given Padilla’s claim that he just found the transaction cards on the ground while he was walking home after a night of drinking. (See generally Trial Tr., pp.392-419.)

Padilla’s claim that the spark plug evidence was unfairly prejudicial also fails. (Appellant’s Brief, pp.11-12.) Padilla states his claim of prejudice as follows: “The presentation of the evidence of the spark plug was overly prejudicial because it painted Mr. Padilla as a bad guy who is roaming the streets looking for the right car to break the glass with his Ninja Rocks^[2] at any given moment.” (Appellant’s Brief, p.11.) Evidence that demonstrated Padilla was doing precisely what he was doing, while prejudicial, is not evidence of propensity and therefore not unfairly prejudicial. The state’s evidence is supposed to prove the charged offense. That it actually accomplishes that purpose does not subject it to exclusion. See State v. Guana, 117 Idaho 83, 88, 785 P.2d 647, 652 (Ct. App. 1989) (“All probative evidence is, to some extent, prejudicial. The question is whether that prejudice is unfair—that is, whether it harms the defendant not because of inferences which reasonably can be drawn

² Officer Gonzales testified that ceramic pieces of a spark plug are sometimes referred to as “Ninja rocks.” (Trial Tr., p.88, Ls.9-13.)

from the facts, but because it inflames the jury and rouses them to 'overmastering hostility.'").

Padilla has failed to show error in the admission of the spark plug evidence.

2. The Flashlight

Padilla also claims the district court erred in allowing evidence of the flashlight. (Appellant's Brief, pp.12-13.) Officer Gonzales found the flashlight in a yard when he "rewalked" the area where he pursued Padilla after he ran. (Trial Tr., p.94, Ls.16-25.) Padilla contends the evidence is irrelevant, asserting "[t]here was no connection between [this case and the flashlight]" since Officer Gonzales failed to ask the "property owners where he found the flashlight, if the instrument belonged to them" and he "never had the flashlight examined for fingerprint evidence." (Appellant's Brief, p.12.) Padilla's arguments do not demonstrate a lack of relevance. As with the pieces of ceramic spark plug, a flashlight made it more probable than it would be without the evidence that Padilla was stealing transaction cards from cars in the middle of the night. That the state could not conclusively prove the flashlight belonged to Padilla does not make the evidence irrelevant. Padilla's complaints in this regard simply go to the weight of the evidence, not its admissibility. Cf. State v. Pokorney, 149 Idaho 459, 463-64, 235 P.3d 409, 413-14 (Ct. App. 2010) (innocent explanations for defendant's flight go to the weight of the evidence, not its admissibility).

Padilla's claim of prejudice also fails. Like his prejudice argument in relation to the ceramic spark plugs, Padilla claims the flashlight evidence was

unfairly prejudicial because it “allowed the State to argue that [he] was out lurking for cars, walking around with a flashlight to break into people’s cars.”³ (Appellant’s Brief, p.13.) This prejudice argument fails for the same reason Padilla’s other prejudice argument fails – evidence is not unfairly prejudicial just because it demonstrated Padilla was doing precisely what he was charged with doing.

Padilla has failed to show error in the admission of the flashlight evidence.

D. Even If This Court Finds Error In The District Court’s Admission Of The Spark Plug And Flashlight Evidence, The Error Is Harmless

Even if this Court finds error in the admission of either the ceramic spark plug evidence or the flashlight evidence, any error is harmless. “An error is harmless if the reviewing court is able to declare beyond a reasonable doubt that the error did not contribute to the verdict.” State v. Marmentini, 152 Idaho 269, --, 270 P.3d 1054, 1057 (Ct. App. 2011) (citing State v. Perry, 150 Idaho 209, 219-220, 245 P.3d 961, 971-972 (2010)).

Regardless of whether Padilla had a flashlight that he discarded in someone’s yard or had pieces of ceramic spark plugs in his pocket that could

³ Padilla also argues that the evidence was unfairly prejudicial because it “allowed the State” to also argue, “by the way he may be involved with drugs because it is commonly used to hide items in it.” (Appellant’s Brief, p.13.) This argument is beyond the scope of the objection preserved below. Moreover, while Officer Gonzales testified, without objection, that he picked up the flashlight because flashlights are commonly used “when people are out lurking at night” and he has also “found that certain people will hide items inside their flashlights,” such as “drugs, paraphernalia, and other items” (Trial Tr., p.98, L.18 – p.99, L.3), the state never argued that Padilla “may be involved with drugs because [flashlights] are commonly used to hide items in it” (see generally, 2/18/2011 Tr., pp.117-128 (state’s closing argument); pp.152-160 (state’s rebuttal argument)). Padilla’s suggestion to the contrary in an effort to establish prejudice is false.

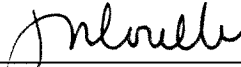
have been used to gain access to locked cars, there is no dispute that he had financial transaction cards in his possession that did not belong to him and that he did not have permission to use. Padilla's story that he found these items on the ground because he was intoxicated and "curious" and then ran only because the officer in his marked patrol car "startled" him was simply not credible. (Trial Tr., p.407, Ls.9-17.) This Court can easily conclude beyond a reasonable doubt that, even without the evidence of the ceramic spark plugs and flashlight, the jury would have found Padilla guilty of stealing the transaction cards found in his possession, particularly given the jury's knowledge of Padilla's prior conviction for possession of stolen property, and Padilla's lack of a credible explanation as to how he obtained Mr. Mauch's and Ms. Labrum's cards. (Trial Tr., p.391, Ls.5-11.)

Padilla has failed to establish the district court abused its discretion in admitting the spark plug or flashlight evidence; however, even if Padilla could establish an abuse of discretion, any error is harmless beyond a reasonable doubt.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon the jury verdicts finding Padilla guilty of two counts of grand theft with a persistent violator enhancement.

DATED this 2nd day of August, 2012.



JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of August 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

DIANE WALKER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



JESSICA M. LORELLO
Deputy Attorney General

JML/pm