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State v. Cardoza Appellant's Brief Dckt. 39811

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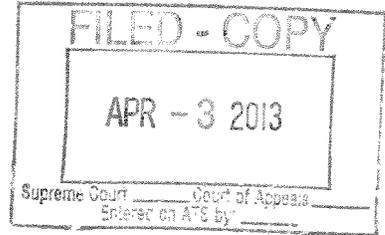
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
Plaintiff-Respondent-)
Cross Appellant,)
)
vs.)
)
MARTIN CARDENAS CARDOZA,)
)
Defendant-Appellant)
Cross Respondent.)
_____)

No. 39811
Canyon County Case CR-2011-13216



OPENING BRIEF OF APPELLANT

Appeal from the District Court of the Third
Judicial District of the State of Idaho
In and For the County of Canyon

HONORABLE RENAE J. HOFF
District Judge

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II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from Mr. Martin Cardoza's judgment of conviction and sentence for aiding and abetting trafficking in methamphetamine.

B. Factual Summary and General Course of Proceedings

On May 13, 2011 Mr. Cardoza was charged with aiding and abetting trafficking of methamphetamine, a felony, in violation of Idaho Code §§ 37-2732B(a)(1) & 18-204. R. 9-10. The State alleged that on the day prior, May 12, 2011, Mr. Cardoza "did knowingly aid, abet, facilitate or encourage another to possess or deliver four hundred (400) grams or more of methamphetamine and/or amphetamine, a controlled substance, or of any mixture or substance containing a detectable amount of methamphetamine and/or amphetamine." *Id.* Before the scheduled preliminary hearing occurred, the grand jury of Canyon County returned a Superseding Indictment mirroring the charge previously set forth in the Complaint. R. 14-15. Mr. Cardoza entered a plea of not guilty before the district court. R. 21-22. Following a series of continuances and as well as changes in defense counsel, a jury trial was eventually scheduled to commence December 6, 2011. R. 49-50.

On October 14, 2011, the State filed a notice of intent to introduce I.R.E. 404(b) evidence. R. 51-53. The State sought to introduce evidence of other crimes, wrongs, or acts in two different regards. Specifically, the State in its written notice requested the confidential informant be permitted to testify regarding:

[T]he ongoing business relationship between the Confidential Informant and Martin Cardenas Cardoza and Juan Cardenas Cardoza as it pertains to the practices and methods used by the co-defendants to distribute and traffick [sic] in

Methamphetamine, the methods of using various vehicles, meeting, storage and distribution locations and the use of other individuals as security/counter-surveillance during the distribution of methamphetamine as part of the common scheme or plan of action of the defendants, and to show knowledge and intent in the present case.

R. 52. Secondly, the State requested that Oregon Detective Brad Williams be permitted to testify regarding:

[T]he interstate transportation and storage of methamphetamine by the co-defendants, the use of various locations and vehicles as part of the activities of the co-defendants and the possession of other quantities of methamphetamine as part of the interrelationship and joint activities of the codefendants [sic] as evidence of intent, knowledge and common scheme as it relates to the possession and efforts to distribute the methamphetamine seized as evidence herein.

Id.

Subsequently, on the first day of trial, following jury selection and prior to opening statements, the Court heard argument on the State's I.R.E. 404(b) notice. R. 64-69, Jury Trial Transcript ("Tr."), p. 30, ln. 11 - p. 148, ln. 9. In support of its notice, the State provided further insight into the sort of evidence it sought to introduce against Mr. Cardoza. The prosecuting attorney stated the confidential informant had been dealing with a gentleman known to the confidential informant as "El Primo"¹ for approximately a year. Tr. p. 130, ln. 20 - p. 131, ln. 7. The confidential informant knew El Primo as a source of methamphetamine out of California and the confidential informant had met El Primo through Juan Cardoza. *Id.* at p. 131, lns. 7 - 16. El Primo would apparently arrive in Idaho and with Juan's assistance arrange a meeting with the confidential informant. *Id.* at p. 131, ln. 17 - p. 132, ln. 8. El Primo, driving vehicles registered in the area, the latest being a green GMC Yukon, would then deliver the methamphetamine as

¹ At trial the confidential informant identified Mr. Martin Cardoza as being the person he knew as El Primo. Tr. p. 230, lns. 2-8.

requested by the confidential informant. *Id.* at p. 132, lns. 8 -12. In sum, the evidence of crimes, wrongs, and bad acts the State sought to introduce through the confidential informant was the confidential informant's statements regarding his past drug dealings with El Primo.

The State also sought to introduce additional evidence of other crimes through Oregon Detectives Brad Williams and Jess Stennett. As explained by the State, following the arrest of Martin Cardoza, law enforcement attempted to locate Juan Cardoza. *Id.* at p. 135, lns. 4-5. After Juan was arrested at his place of employment law enforcement sought to search his residence which was supposedly in Nampa. *Id.* at p. 135, lns. 5-8. Eventually it was determined that Juan had moved to Oregon. *Id.* at p. 135, ln. 8. Outside of Juan's alleged new residence in Oregon, law enforcement located a white Ford pickup with California license plates registered to Martin Cardoza. *Id.* at p. 135, lns. 10-18. Oregon law enforcement searched the Ford pickup and inside found 520 grams of methamphetamine. *Id.* at p. 135, lns. 19-21. In sum, the evidence of crimes, wrongs, and bad acts the State sought to introduce through the Oregon detectives was the discovery of methamphetamine in Mr. Cardoza's vehicle in another state – evidence that resulted in Mr. Cardoza being similarly charged in Oregon.

Despite defense counsel's arguments to the contrary, the district court held that all the State's proffered evidence of crimes, wrongs, and bad acts would be admissible in the State's case in chief. R. 67-68, Tr. p. 144, ln. 16 - p. 148, ln. 9.

Following trial, the jury found that Mr. Cardoza guilty of aiding and abetting trafficking in methamphetamine. R. 107. The district court sentenced Mr. Cardoza to a unified term of 20 years with 12 years determinate. R. 119, 136-137. This timely appeal follows.

III. ISSUE PRESENTED ON APPEAL

1. Did the district court err in permitting the State to introduce evidence of prior drug dealings with the confidential informant and evidence of other charged crimes in Oregon pursuant to Idaho Rule of Evidence 404(b)?

IV. ARGUMENT

A. **Mr. Cardoza Was Harmed by the District Court's Error in Permitting the State to Introduce Evidence of Crimes, Wrongs, and Bad Acts Pursuant to Idaho Rule of Evidence 404(b)**

As noted above, pursuant to I.R.E. 404(b), the State sought to introduce evidence of the confidential informant's statements regarding his alleged past drug dealings with Mr. Cardoza as well as evidence of methamphetamine being found in a Ford pickup licensed to Mr. Cardoza and located in Oregon, asserting that such evidence was relevant to Mr. Cardoza's knowledge and intent to possess the methamphetamine in the instant case and to also show a common scheme or plan of action by Mr. Cardoza and his co-defendants.² R. 51-52. With regards to the alleged prior dealings between Mr. Cardoza and the confidential informant, the district court reasoned that the evidence was relevant to Mr. Cardoza's knowledge, even though Mr. Cardoza had not yet argued lack of knowledge nor presented any evidence of such. Tr. p. 147, lns. 3-11. The district court also ruled that evidence of the methamphetamine found in the Ford pickup in Oregon, for which Mr. Cardoza was criminally charged with at the time, was relevant to "intent and knowledge, . . . preparation, . . . plan, [and] to absence of mistake." *Id.* at p. 147, lns. 17-20. The district court summed up its ruling, stating:

So I conclude that the evidence will come in. It's clearly evidence that would come in in rebuttal, and I briefly talked with the attorneys this morning. My

² Mr. Cardoza was actually the sole defendant in the case – there were no co-defendants. R. 9-10, 14-15. Mr. Cardoza's supposed "co-defendant," Juan Cardoza, was acquitted following trial. *See* Canyon County Case No. CR-2011-13213-C.

bigger concern was whether it could come in in the State's case in chief, but I do think both acts show knowledge and intent, and therefore, I am going to allow the State to present that evidence.

Id. at p. 148, lns. 3 - 9.

This Court reviews a trial court's decision to admit evidence for abuse of discretion.

State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009); *State v. Field*, 144 Idaho 559, 564, 165 P.3d 273, 278 (2007). Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith. I.R.E. 404(b); *Field*, 144 Idaho at 569, 165 P.3d at 283. Admissibility of evidence of other crimes, wrongs, or acts when offered for a permitted purpose is subject to a two-tiered analysis. First, the trial court must determine whether there is sufficient evidence to establish the other crime or wrong as fact and whether the fact of another crime or wrong would be relevant to a material and disputed issue concerning the crime charged, other than propensity. *Grist*, 147 Idaho at 51, 205 P.3d at 1187; *Field*, 144 Idaho at 569, 165 P.3d at 283. Second, the trial court must engage in a balancing under I.R.E. 403 and determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence.

1. The confidential informant's statements about alleged prior drug dealings with Mr. Cardoza

Here, citing *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1990) and *State v. Canelo*, 129 Idaho 386, 924 P.2d 1230 (Ct. App. 1996), the district court concluded that evidence of prior drug dealings was an "easy decision" because the appellate courts of Idaho "have suggested that such evidence is relevant." Tr. p. 146, ln. 17 - p. 147, ln. 2. However, in *Canelo*, the State introduced evidence of prior drug dealings only after the defendant "had laid the foundation for his affirmative defense of entrapment." *Canelo*, 129 Idaho at 394, 924 P.2d at

1238.

Conversely, Mr. Cardoza did not present the affirmative defense of entrapment. Nor did Mr. Cardoza ever claim that he did not know what methamphetamine is or what it looks like. In fact, the defense did not call any witnesses, including Mr. Cardoza himself. Instead the defense argued the State had failed to prove its case beyond a reasonable doubt. Tr. p. 371, ln. 16 - p. 378, ln. 13. Thus, Mr. Cardoza did not affirmatively place his intent at issue, but rather, argued the State lacked evidence and failed to prove that Mr. Cardoza knowingly possessed a controlled substance. As stated by the Court of Appeals, in cases such as this “where the act charged against the defendant itself characterizes the offense; thus, guilty intent [is] proven by proving the act, and evidence of other crimes [is] not necessary or admissible to establish the accused’s intent.” *State v. Cook*, 144 Idaho 784, 788, 171 P.3d 1282, 1286 (Ct. App. 2007) (admitting evidence of the defendant’s prior drug deliveries would virtually eviscerate the restrictions of I.R.E. 404(b)). Accordingly, the district court erred in allowing the State to introduce in its case in chief evidence of alleged prior drug dealings between the confidential informant and Mr. Cardoza pursuant to Rule 404(b).

Mr. Cardoza acknowledges that evidence of other crimes can in some instances be admissible if the proffered evidence is so inseparably connected to the charged conduct that it must be admitted in order to communicate the full story. *State v. Naranjo*, 152 Idaho 134, 141, 267 P.3d 721, 728 (Ct. App. 2011). That is not the case here. Instead, as was the case in *Naranjo*, “the district court made no determination as to whether there was sufficient evidence to establish the prior bad acts as fact; the first part of the first tier of the *Grist* inquiry.” *Id.*

Moreover, evidence of prior drug dealings was only relevant to suggest propensity. As

noted by the *Naranjo* Court:

That the CI bought from [the defendant] in the past, so he thought he could buy from him again, certainly sounds like propensity. To accept the State and the district court's position would be to hold that a confidential informant could always testify as to prior drug purchases to merely explain why the informant targeted the defendant in the charged offense.

Id. Simply because Mr. Cardoza was purportedly involved in prior drug dealings does not prove that he had knowledge and control of methamphetamine found in the borrowed vehicle he was driving May 12, 2011. *See State v. Sheldon*, 145 Idaho 225, 230, 178 P.3d 28, 33 (2008) (statements regarding prior drug dealings are highly prejudicial and have a low probative value). As in *Naranjo*, the confidential informant's statements regarding prior drug dealings with Mr. Cardoza is propensity evidence.

Similarly, to allow the use of propensity evidence as was admitted here for the purposes of establishing intent, knowledge, preparation, plan, or absence of mistake, none of which was affirmatively put at issue by Mr. Cardoza, would eliminate the purpose of I.R.E. 404(b). The prejudicial effect of this sort of evidence is that it induces the jury to believe the accused is more likely to have committed the crime on trial because he is a man of criminal character. *Grist*, 147 Idaho at 52, 205 P.3d at 1188. Character evidence, therefore, takes the jury away from their primary consideration of the guilt or innocence of the particular crime on trial. *Id.*

This danger was particularly present here, where the State's case was premised upon Mr. Cardoza's constructive possession of methamphetamine found in a borrowed vehicle and no fingerprints of Mr. Cardoza were found on the packaging of the drugs. The evidence of prior drug dealings the State was permitted to introduce was highly prejudicial and encouraged the jury to conclude that Mr. Cardoza knowingly possessed methamphetamine on this occasion.

Accordingly, this evidence likely contributed to the verdict and this Court must vacate Mr. Cardoza's conviction.

2. Evidence of other charged crimes in Oregon

For the reasons set forth above, the district court also erred in permitting the State to introduce evidence that in Oregon, methamphetamine was found in a Ford pickup registered to Mr. Cardoza and for the sake of brevity the same arguments and analysis will not be repeated here. However, it must be separately noted the inflammatory nature of this evidence carries great potential for prejudice.

The prohibition against propensity evidence arises from the common law. *Grist*, 147 Idaho at 52, 205 P.3d at 1188. It must be remembered that the “policy underlying the common law rule [against propensity evidence] was the protection of the criminal defendant.” *Id.* (citations omitted). Part of this protection comes from the requirement that the district court engage in a balancing under I.R.E. 403 to determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence. Here, the district court's “balancing,” or analysis, makes little to no sense. The district court simply stated:

And I finally conclude that it is not again so inflammatory that it would lead a jury to convict. The jury will not be asked to decide what occurred in Oregon. They're only going to be asked to decide what occurred in Idaho. And I think counsel is certainly capable of making an argument with regard to that.

Tr. p. 147, ln. 21 - p. 148, ln. 2. This “analysis” is not an exercise of reason – there is no explanation or balancing at all.

Any legitimate purpose of allowing the State to present evidence in its case in chief that in another state a large quantity of methamphetamine was found in a vehicle registered to Mr. Cardoza is unequivocally and substantially outweighed by the unfair prejudice of such evidence.

Yet Mr. Cardoza's jury was presented with this evidence, which undoubtedly resulted in them believing he was more likely to have committed the particular crime for which he was on trial. If there is any question as to the State's motive in presenting this propensity evidence, it is made crystal clear by the State in its closing argument:

But when the officers were over searching the pickup, it was locked. The drugs were in the car. Those were there. Whose car was it?

Does that lead you to believe that he didn't know about this substance in the other vehicle he was driving or does that support your finding that he did not know about this drug, that he did intentionally go to meet [the confidential informant] and that he knowingly was going to transfer \$20,000 of drugs to [the confidential informant]?

And let's stop there for a minute. If we have all of these magical coincidences, roughly \$40,000 worth of the drugs just happened to find their way into vehicles associated with Martin Cardenas Cardoza and he doesn't [sic] about it? Drug dealers don't leave \$40,000 worth of dope laying around where people who aren't involved with the crime can take it from them. That's a legitimate inference you can find as well. How reasonable is it to believe that a drug dealer would leave this stuff where someone who couldn't be trusted could either steal it or get rid of it.

Tr. p. 382, lns. 3-24. The State is unabashedly arguing propensity – that Mr. Cardoza is guilty of possessing methamphetamine in Idaho because he possessed methamphetamine in Oregon.

Accordingly, this evidence likely contributed to the verdict and this Court must vacate Mr. Cardoza's conviction.

V. CONCLUSION

Mr. Cardoza respectfully asks that this Court vacate his judgment of conviction and sentences.

Respectfully submitted this 07 day of April, 2013.

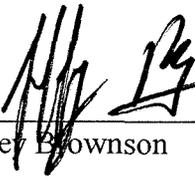
A handwritten signature in black ink, appearing to read 'Jeffrey Brownson', written over a horizontal line.

Jeffrey Brownson
Attorney for Martin Cardoza

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 03 day of April, 2013, I caused two true and correct copies of the foregoing to be mailed to:

Deputy Attorney General
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P.O. Box 83720
Boise, ID 83720-0010



Jeffrey Brownson