9-12-2016

State v. Cruz Respondent's Brief Dckt. 43486

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43486**
Plaintiff-Respondent,	)	
	)	**Minidoka Co. Case No.**
vs.	)	**CR-2013-2413**
	)	
CHRISTOPHER CRUZ,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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District Judge

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Nature Of The Case

Christopher Cruz appeals from the judgment of conviction entered upon his guilty plea to second-degree murder. Cruz contends the district court erred in its in limine ruling that statements Cruz made during recorded jail calls would be admissible at trial.

Statement Of Facts And Course Of Proceedings

Cruz murdered Craig Short by shooting him three times. (PSI, pp.4-5.) After shooting Short, Cruz pointed his gun at Jared McNeil. (PSI, p.4.) "McNeil heard a 'click click,'" after which Cruz "told him not to get into the car or go anywhere." (PSI, p.4.) McNeil ran away after he saw Cruz put the gun down, but Cruz chased McNeil and tackled him. (PSI, p.4.) "McNeil was able to break away and ran to the first house on the right side of the road" and knocked on the door. (PSI, p.4.) After waiting for someone to answer, McNeil "took a brick and broke the front window glass," and went inside to see if he could find a phone to call 911. (PSI, p.4.) Unsuccessful in his efforts, McNeil left, and eventually made it to another house, which he also entered in order to call for help; one of the residents called 911. (PSI, pp.4-5.)

Cruz fled to Texas where he was arrested several weeks later. (PSI, pp.3, 6; see R., p.3 (entry dated 10/15/2013, indicating arrest warrant served in Texas on 9/24/2013).) When Cruz returned to Idaho, he agreed to be interviewed by law enforcement. (See generally Exhibit 35.) During that interview, Cruz made statements indicating he was under the influence of drugs, or "coming down"

from drugs, when he murdered Short and assaulted and battered McNeil. (See, e.g., Exhibit 35 at p.8, L.14 – p.9, L.4, p.16, L.9 – p.17, L.5, p.37, Ls.3-6, p.44, Ls.12-22, p.48, L.11 – p.49, L.3, p.50, Ls.6-9.)

The state charged Cruz with first-degree murder and attempted first-degree murder. (R., pp.25-27, 44-46, 74-76, 177-179.) The state also filed an enhancement for use of a deadly weapon. (R., pp.28-29, 47-48, 78-79, 181-182.) Prior to trial, the state filed a motion in limine requesting admission of several statements Cruz made to his mother during recorded jail calls. (R., pp.208-209, 240-241, 278-279.) These statements included Cruz characterizing himself as a "monster," and Cruz's admissions regarding his drug use; the court granted the state's motion. (12/5/2014 Tr., p.40, L.1 – p.42, L.21, p.45, L.13 – p.48, L.8.)

Pursuant to a plea agreement, Cruz pled guilty to an amended charge of second-degree murder and the state dismissed the enhancement and the attempted murder charge, and agreed to "join" Cruz "in a Rule 11 Agreement, where the Court will agree to sentence [Cruz] to not more than twenty (20) years fixed, with the Court deciding the indeterminate portion of the sentencing." (R., pp.340-342 (Rule 11 agreement), pp.343-350 (guilty plea advisory); see also pp.337-338 (amended information).) Cruz reserved the right to appeal any decisions made by the trial court prior to the entry of his guilty plea. (R., p.341.)

The court imposed a unified 40-year sentence, with 18 years fixed. (R., pp.413-414.) Cruz filed a motion to reduce his sentence, which the district court

denied. (See generally Supp. R.) Cruz filed a timely notice of appeal. (R., pp.421-423.)

ISSUE

Cruz states the issue on appeal as:

> Did the district court abuse its discretion when it allowed the admission [sic] of Excerpt No. 4 and Excerpt No. 6?

(Appellant's Brief, p.8.)

The state rephrases the issue on appeal as:

Has Cruz failed to establish any error in the district court's pretrial ruling that certain statements Cruz made during recorded jail calls would be admissible at trial?

ARGUMENT

Cruz Has Failed To Show Any Error In The District Court's In Limine Ruling That Certain Statements Cruz Made During Recorded Jail Calls Would Be Admissible At Trial

A. Introduction

Cruz "asserts the district court abused its discretion when it allowed the admission of Excerpt No. 4 and Excerpt No. 6" from his recorded jail calls. (Appellant's Brief, p.9.) According to Cruz, the district court's decision was not "consistent[ ] with applicable legal standards" because, he claims, Excerpt No. 4 was unfairly prejudicial, and the district court "did not articulate a non-propensity purpose" for Cruz's statements about his "drug use," which were included in Excerpt No. 6. (Appellant's Brief, p.9.) Cruz's claims fail. Review of the applicable law, and the proffered evidence, reveals that the court's pretrial ruling that the evidence would be admissible at trial was consistent with the standards governing relevance under I.R.E. 401, and prejudice under I.R.E. 403.

B. Standard Of Review

"When reviewing the trial court's evidentiary rulings, this Court applies an abuse of discretion standard." State v. Jones, 160 Idaho 449, ___, 375 P.3d 279, 280 (2016) (citing Dulaney v. St. Alphonsus Reg'l Med. Ctr., 137 Idaho 160, 163–64, 45 P.3d 816, 819–20 (2002)). "'To determine whether a trial court has abused its discretion, this Court considers whether it correctly perceived the issue as discretionary, whether it acted within the boundaries of its discretion and consistently with applicable legal standards, and whether it reached its decision by an exercise of reason.'" Jones, 160 Idaho at ___, 375 P.3d at 280 (quoting

Perry v. Magic Valley Reg'l Med. Ctr., 134 Idaho 46, 51, 995 P.2d 816, 821 (2000)).

C. Cruz Has Failed To Show That The District Court Abused Its Discretion In Concluding That Cruz's Characterization Of Himself As A Monster Was Not Unfairly Prejudicial

The portion of one of Cruz's recorded jail calls identified as "Excerpt No. 4" includes the following conversation between Cruz and his mother, Christina:

> [CRUZ]: Well, it just hit me today. Me and this guy were talking, and he just told me straight out truth, you know? He's not going to beat around the bush. He is going to tell me what the prosecutors think, he's going to tell me what the judge thinks of me and stuff like that. I told him a little bit of what happened, you know? And that's why. I know what happened too.
>
> CHRISTINA CRUZ: Well, I don't believe you were there by yourself. The whole world believes what I believe, and that's because they know you. You're sticking up for somebody, and I think that's bullshit.
>
> [CRUZ]: Well, wait until you see the evidence. Wait till you see what kind of monster I am deep down inside.
>
> CHRISTINA CRUZ: You are not a monster. Did you hear me?

(Tr. "D-1699," 10/23/13, p.7, L.22 – p.8, L.13; see 12/5/2014 Tr., p.40, Ls.1-25 (identifying excerpt as "No. 4").)

The district court correctly concluded that the foregoing conversation would be admissible at trial. To be admissible, evidence must be relevant. I.R.E. 401, 402. 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. State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989). Pursuant to I.R.E. 403, relevant

evidence may be excluded if, in the district court's discretion, the danger of unfair prejudice substantially outweighs the probative value of the evidence. State v. Ruiz, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010); State v. Floyd, 125 Idaho 651, 654, 873 P.2d 905, 908 (Ct. App. 1994); State v. Nichols, 124 Idaho 651, 656, 862 P.2d 343, 348 (Ct. App. 1993). "The rule suggests a strong preference for admissibility of relevant evidence." State v. Martin, 118 Idaho 334, 340 n.3, 796 P.2d 1007, 1013 n.3 (1990) (emphasis in original). Rule 403 does not offer protection against evidence that is merely prejudicial in the sense of being detrimental to a party's case. See State v. Leavitt, 116 Idaho 285, 290, 775 P.2d 599, 604 (1989) ("Certainly that evidence was prejudicial to the defendant, however, almost all evidence in a criminal trial is demonstrably admitted to prove the case of the state, and thus results in prejudice to a defendant."). Rather, the rule protects only against evidence that is unfairly prejudicial, that is, evidence that tends to suggest a decision on an improper basis. Floyd, 125 Idaho at 654, 873 P.2d at 908. As long as the evidence is relevant to prove some issue other than the defendant's character and its probative value for the proper purpose is not substantially outweighed by the probability of unfair prejudice, it is not error to admit it. State v. Cross, 132 Idaho 667, 670, 978 P.2d 227, 230 (1999).

The district court correctly found that Cruz's "monster" comment was relevant to show Cruz's "consciousness of the magnitude of his conduct," and correctly concluded that the comment was not unfairly prejudicial. (12/5/2014 Tr., p.42, Ls.2-21.) On appeal, Cruz does not challenge the district court's relevance determination, but instead argues that the "probative value of [his]

statement characterizing himself as a 'monster' was substantially outweighed by the danger of unfair prejudice, because it invited inordinate appeal to lines of reasoning outside of the evidence and to emotions which are irrelevant to the decision making process." (Appellant's Brief, p.12.) By this, Cruz apparently means that the "statement would prompt the jury to convict [him] on his self-description, not on the evidence presented by the State." (Appellant's Brief, p.12.) This argument ignores the fact that Cruz's statement, if admitted, is evidence, which the jury could properly use in determining Cruz's guilt. Rule 403 only allows for exclusion if the evidence suggests a decision on an improper basis, not if the evidence is harmful to the defendant. Cruz's monster comment, made in the context of what he believed the evidence would show, is analogous to a confession and demonstrates Cruz's consciousness of guilt. Just as evidence of a confession would not be an improper basis for decision, Cruz's analogous comments would not either. The district court did not abuse its discretion in concluding that Excerpt No. 4 would not be unfairly prejudicial.

D. Cruz Has Failed To Show That The District Court Abused Its Discretion In Concluding That Cruz's Comments About Drug Use, Which Cruz Made In The Context Of Explaining His Criminal Conduct In This Case, Would Be Admissible At Trial

The portion of another of Cruz's recorded jail calls was identified as "Excerpt No. 6" and includes the following statement Cruz made to his mother:

> . . . [T]here's a lot of inconsistencies in [McNeil's] story, and there's just -- there's a lot of inconsistencies with me too. Well, I pretty much said pretty much the truth, but I justified all my actions. Like, I said I was under the influence at first. But they have my blood anyway, so they could do the test that I wasn't on methamphetamines, or I didn't have it in my blood system or other

> different types of drugs besides THC. But I admitted to that, I smoke pot every now and then sometimes. It's no big deal.

(Tr. "D-1705," 11/21/13, p.6, Ls.5-14; see 12/5/2014 Tr., p.45, Ls.13-25 (identifying excerpt as "No. 6").)

Cruz argued the foregoing statement was inadmissible based on "relevance, unfair prejudice," and the "last two sentences about the possible drug use" required the court "to look at 404(b)." (12/5/2014 Tr., p.46, Ls.21-24.) Cruz further argued that, "[i]f he is going to be convicted, it needs to be [based on] what is presented and not for allegations or his statements that he had recreationally used marijuana every now and then." (12/5/2014 Tr., p.46, L.24 – p.47, L.2.)

In response to Cruz's objection, the district court inquired whether, during Cruz's interview with law enforcement, Cruz discussed being on drugs.[1] (12/5/2014 Tr., p.47, Ls.8-10.) The prosecutor advised that Cruz "stated that he was high on acid, and then he took a needle of meth and shot up and got even higher so he was at a paralyzed state." (12/5/2014 Tr., p.47, Ls.11-16.) The district court then noted that "No. 6, would directly contradict in [Cruz's] own words what he told the detectives in the interview" (12/5/2014 Tr., p.47, Ls.17-19), and ruled:

> It does appear to me to be relevant to the elements of this case, his condition at the time of the offense as he has described it

[1] In State v. Young, 133 Idaho 177, 179, 983 P.2d 831, 833 (1999), the Idaho Supreme Court observed that "motions in limine seeking advance rulings on the admissibility of evidence are fraught with problems because they are necessarily based upon an alleged set of facts rather than the actual testimony which the trial court would have before it at trial in order to make its ruling." This observation is pertinent here.

> and his justification as offered and, indeed, it is prejudicial, but not unduly prejudicial. They are statements made both in this instance and in the interview with the detectives by the defendant and they relate to his statements that appear to have been offered initially in the interview with the detectives as justification regarding his conduct or his alleged conduct.
>
> So at this point, No. 6 is admissible, and will be able to be presented to the jury if the state wishes to do so.

(12/5/2014 Tr., p.47, L.22 – p.48, L.10). The district court's ruling was correct.

As noted, evidence is relevant so long as it 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. Hocker, 115 Idaho at 547, 768 P.2d at 810. Evidence of Cruz's state of mind at the time of the charged offenses was undoubtedly relevant. This evidence included Cruz's claims about his state of mind, and any claim he made about his ability to form the requisite intent for first-degree murder and attempted murder. Part of Cruz's initial story was that his actions were, in his view, "justified" because he was under the influence of drugs. The fact that Cruz subsequently admitted to lying about his methamphetamine use and noted that the only drug found in his blood test results would be "THC" was relevant to impeach the validity of any explanation he gave about his state of mind and intent. See State v. Velasquez-Delacruz, 125 Idaho 320, 323, 870 P.2d 673, 676 (1994) (statements relating to intent with respect to crime charged are relevant to a material issue other than propensity).

On appeal, Cruz complains only about that portion of Excerpt No. 6 in which Cruz "admitted to having THC in his blood system" and his statement, "I

smoke pot every now and then sometimes. It's no big deal." (Appellant's Brief, p.13.) Specifically, Cruz argues that "evidence of [his] other acts of drug use," "implicated [his] character," "was not intrinsic to the crimes charged," and was, therefore, "subject to the strictures of Rule 404(b)," such that the district court erred by not "conduct[ing] a full Rule 404(b) admissibility analysis on the other acts of drug use statements." (Appellant's Brief, pp.13-14.) Cruz's argument fails because Cruz's admission that he "admitted" to "smok[ing]" "pot" "now and then" was not, under any reasonable view, proposed as evidence of propensity, which is what I.R.E. 404(b) guards against. State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2011) (citations omitted) ("Evidence of other crimes, wrongs, or acts is not admissible to prove a defendant's criminal propensity. However, such evidence may be admissible for a purpose other than that prohibited by I.R.E. 404(b)."). Rather, the evidence was relevant to rebut Cruz's earlier statements regarding the scope and nature of his drug use as justification for his criminal conduct. When considered in context, Cruz's statement about his "now and then" use of marijuana did not warrant a "full" 404(b) analysis.

Nor did Cruz ever object to the lack of a "full" 404(b) analysis. Although Cruz raised I.R.E. 404(b) as a concern in relation to his statement about his "now and then" marijuana use (12/5/2014 Tr., p.46, Ls.22-24), he did not complain, as he does on appeal, about the district court's failure to "conduct a full Rule 404(b) admissibility analysis" either at the time of the district court's ruling or anytime between the date of the motion hearing, which was held on December 5, 2014, and December 15, 2014, the date he pled guilty to a reduced second-degree

murder charge (see generally R., pp.316-336), although nothing precluded him from doing so. State v. Young, 136 Idaho 113, 120, 29 P.3d 949, 956 (2001) ("An order granting a motion in limine is not a final order. The trial court can reconsider the issue at any time."). If Cruz's decision to plead guilty actually hinged on the district court's lack of analysis of Cruz's admission to smoking marijuana "now and then," surely he would have pursued a "full" analysis from the district court rather than an appeal.[2] While the state recognizes that a defendant is not required to renew an objection on an issue that was decided pre-trial in order to preserve the issue for appeal, the record in this case supports the conclusion that Cruz acquiesced in the error he claims because he could have requested a "full" I.R.E. 404(b) analysis, but failed to do so. State v. Abdullah, 158 Idaho 386, 420-421, 348 P.3d 1, 35-36 (2015) (quotations and citation omitted) ("It has long been the law in Idaho that one may not successfully complain of errors one has acquiesced in or invited. Errors consented to, acquiesced in, or invited are not reversible."); State v. Hester, 114 Idaho 688, 699, 760 P.2d 27, 38 (1988) (quotations and citation omitted) (noting that when trial judge rules on motion in limine, "failure to renew the objection at trial will not ordinarily constitute a waiver of the issue on appeal").

Regardless, this Court can easily conclude that, even if the district erred by not conducting a "full" 404(b) analysis of Cruz's statement about his "other acts of drug use," such error was harmless because it did not affect Cruz's

[2] On the Guilty Plea Advisory form, Cruz indicated he was pleading guilty because he believed it was in his "best interest to stay away from life in prision [sic]." (R., p.349.) Cruz reiterated this sentiment at the change of plea hearing. (12/15/2014 Tr., p.34, Ls.9-24.)

substantial rights, or his decision to plead guilty, particularly given that Cruz put his drug use (or lack thereof) squarely at issue by trying to justify his criminal actions by claiming he was under the influence. See I.C.R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); see also Young, 136 Idaho at 120, 29 P.3d at 956 ("Error may not be based upon a ruling that excludes evidence unless a substantial right of the party is affected and the substance of the evidence was made known to the court by offer of proof.").

Cruz has failed to meet his burden of showing reversible error with respect to the district court's in limine ruling that certain statements Cruz made to his mother during recorded jail calls would be admissible at trial.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon Cruz's guilty plea to second-degree murder.

DATED this 12th day of September, 2016.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of September, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

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