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State v. Garcia Respondent's Brief 1 Dckt. 40544

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. ROBERT JAVIER GARCIA, JR., Defendant-Appellant.	)	No. 40544 Blaine Co. Case No. CR-2011-2095

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature of the Case

Robert Javier Garcia appeals his judgment of conviction entered on a jury verdict finding him guilty of aiding and abetting delivery of methamphetamine.

Statement of Facts and Course of Proceedings

The state charged Garcia with felony aiding and abetting delivery of methamphetamine, and the matter proceeded to a jury trial. (R., pp. 7-9, 88-97, 117-124.) At trial, the state's witnesses included officers with the Sun Valley Police Department's Narcotics Enforcement Team. (Tr., pp. 132-201, 202-225.) The officers testified that their investigation, which led to Garcia's arrest, involved a confidential informant (CI). (See Tr., p. 140, Ls. 2-10; p. 206, L. 19 – p. 207, L. 15.) The CI also testified. (Tr., pp. 226-287.)

The CI's role was to arrange and carry out a buy of 3.5 grams (an "eight ball") of methamphetamine from known dealer Ricardo Vargas. (Tr., p. 137, L. 25 – p. 138, L. 1; p. 228, L. 24 – p. 229, L. 1; p. 230, L. 20 – p. 232, L. 25.) The police gave the CI a wire, which allowed police to hear the transaction. (Tr., p. 147, Ls. 13-18; p. 231, Ls. 6-7.)

The CI called Vargas to buy some methamphetamine, and Vargas told the CI to come to his house. (Tr., p. 230, L. 20 – p. 231, L. 3, Ls. 1-3; p. 234, Ls. 3-8.) When the CI arrived, Vargas was sitting in the front lawn with Jose Hurtado. (Tr., p. 236, L. 19 – p. 237, L. 2.) Vargas and Hurtado asked the CI if he was working with the police. (Tr., p. 237, L. 25 – p. 238, L. 1.) The CI's wire

was in his pocket, so he lifted his shirt to show that he was not wearing a wire on his body. (Tr., p. 238, Ls. 1-3.)

Convinced that the CI was not working with police, Hurtado made a phone call, then told the CI "it would be there in about an hour." (Tr., p. 238, Ls. 4-20.) A while later, Garcia drove up in a Mercedes SUV. (Tr., p. 239, Ls. 4-7, 22-24.) After five minutes or less, Garcia left, and Hurtado told the CI it would be "a half-hour longer." (Tr., p. 239, Ls. 6-7; p. 240, Ls. 7-8; p. 241, Ls. 7-12.) They waited roughly an hour more, during which the CI gave Hurtado $350 which the police had provided for the transaction. (Tr., p. 232, Ls. 1-13; p. 244, Ls. 16-21; p. 252, Ls. 9-12.) Then Garcia returned in his Mercedes SUV. (Tr., p. 241, Ls. 17-18; p. 242, Ls. 23-25.)

Garcia parked in front of the house, and Hurtado approached Garcia. (Tr., p. 243, Ls. 2-3; p. 254, Ls. 21-25.) Hurtado's back was turned, so the CI did not see Hurtado's or Garcia's hands, but saw they were close enough to touch each other. (Tr., p. 255, Ls. 3-10.) Three or four minutes later, Hurtado walked back to the CI and gave him a plastic baggie of methamphetamine while Garcia remained in his car. (Tr., p. 253, Ls. 21-24; p. 255, Ls. 11-24.) The CI let Vargas take out "a couple rocks" of methamphetamine for himself as further assurance that he was not working with police, because in the past, the CI would smoke methamphetamine with Vargas after buying it. (Tr., p. 253, Ls. 13-19.)

Police observing the transaction on surveillance saw the white Mercedes arrive at Vargas' house, and recognized it as "being involved in drug activity . . . [and] that the owner was Robert Garcia." (Tr., p. 162, Ls. 17-25.) After the

transaction was done, the CI left Vargas' home on foot, then was picked up by officers. (Tr., p. 222, Ls. 15-16; p. 257, Ls. 5-9.)

At trial, after the state rested its case, defense counsel moved for a judgment of acquittal under Rule 29 based on insufficiency of evidence. (R., p. 120; Tr., p. 348, Ls. 1-6.) The district court heard arguments from counsel then denied the motion, opting to see what the jury decided. (Tr., p. 348, L. 8 – p. 372, L. 24.) During deliberations, the jury asked for the court reporter to reread the CI's testimony, from direct examination only. (Tr., p. 424, Ls. 7-14.) Over defense counsel's objection, the court had the CI's testimony reread as requested until the jury indicated it heard what it needed. (Tr., p. 424, L. 15 – p. 426, L. 25; p. 428, L. 22 – p. 451, L. 14.)

The jury found Garcia guilty of aiding and abetting delivery of methamphetamine. (Tr., p. 455, Ls. 1-4; R., p. 125.) Defense counsel renewed the motion for judgment of acquittal, which the court denied. (Tr., p. 462, L. 17 – p. 463, L. 18.) The court entered a judgment of conviction and sentenced Garcia to a unified term of four years and eight months, with two years and two months fixed. (R., pp. 147-50.) Garcia timely appealed. (R., pp. 152-54.)

ISSUES

Garcia states the issues on appeal as:

1. Should this Court vacate Mr. Garcia's conviction for aiding and abetting the delivery of methamphetamine because there was insufficient evidence to support the conviction?

2. Did the district court abuse its discretion when it allowed the rereading of a limited portion of the confidential informant's testimony?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Construing the evidence and the reasonable inferences to be drawn therefrom in favor of upholding the jury's verdict, has Garcia failed to show his conviction should be set aside?

2. Has Garcia failed to show the district court abused its discretion in allowing the partial rereading of the confidential informant's testimony?

ARGUMENT

I.
Construing The Evidence And Reasonable Inferences Therefrom In Favor Of Upholding The Jury's Verdict, Garcia Has Failed To Show His Conviction Should Be Set Aside

A. Introduction

Garcia contends the state failed to present sufficient evidence to support the jury's verdict finding him guilty beyond a reasonable doubt of aiding and abetting the delivery of methamphetamine. (Appellant's brief, pp. 6-14.) Garcia thus argues the trial court erred in denying his motions for judgment of acquittal, raised at the close of the state's case and after the jury returned its verdict. (Appellant's brief, pp. 6, 14-17.) Applying the appropriate standard of review, Garcia has failed to show his conviction should be set aside.

B. Standard Of Review

In an appeal challenging the sufficiency of evidence to support a conviction entered on a jury verdict, the appellate court views the evidence "in the light most favorable to the prosecution." State v. Severson, 147 Idaho 694, 712, 215 P.3d 414, 432 (2009) (citation omitted). A judgment of conviction will be upheld where there is substantial evidence on which a rational fact-finder could conclude the essential elements of the crime were met beyond a reasonable doubt. Id. (citation omitted). Substantial evidence is that which a reasonable trier of fact would accept and rely on in deciding if a disputed fact has been proven. Id. (citation omitted).

In conducting its review, the appellate court will not substitute its view for that of the jury regarding the credibility of witnesses, the weight to be given to

testimony, or reasonable inferences to be drawn from the evidence. Id. Thus, evidence may be substantial even where it conflicts or is solely circumstantial. Id. "In fact, even when circumstantial evidence could be interpreted consistently with a finding of innocence, it will be sufficient to uphold a guilty verdict when it also gives rise to reasonable inferences of guilt." Id.

The same standard applies for review of a trial court's ruling denying a motion for judgment of acquittal under I.C.R. 29. See State v. Hill, 140 Idaho 625, 629, 97 P.3d 1014, 1018 (Ct. App. 2004). The appellate court decides "whether there was substantial and competent evidence to support the verdict," and if a reasonable mind could conclude the essential elements of the offense were proven beyond a reasonable doubt. Id. (citation omitted). The appellate court independently considers the evidence, but construes all evidence "in favor of upholding the verdict, . . . and will not substitute its view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, or the inferences to be drawn from the evidence." Id. (citations omitted).

C. The Evidence And Reasonable Inferences Therefrom Support The Jury's Finding That The State Proved The Essential Elements Of Garcia's Offense Beyond A Reasonable Doubt

At trial, the prosecution had the burden of showing that (1) on or about August 25, 2010, (2) in Idaho, (3) Garcia "delivered and/or aided and abetted a delivery of any amount of Methamphetamine to another," (4) knowing or believing it was methamphetamine. (R., p. 103; Tr., p. 395, Ls. 9-18.) As to the first two elements, police testified that their investigation in this case involved surveillance of a methamphetamine deal on August 25, 2010 in Hailey, Idaho,

using a confidential informant. (Tr., p. 139, L. 24 – p. 140, L. 4; p. 149, L. 9 – p. 150, L. 13; p. 206, Ls. 4-8; p. 210, Ls. 11-17.)

The CI testified that he called Ricardo Vargas to purchase some methamphetamine and was told to go to Vargas' home. (Tr., p. 207, Ls. 8-13; p. 230, L. 20 – p. 231, L. 3; p. 234, Ls. 3-8.) There, the CI convinced Vargas and Jose Hurtado that he was not working with police, then Hurtado made a phone call. (Tr., p. 238, Ls. 4-19.) After the call, Hurtado told the CI the methamphetamine would be there in an hour, and some time later, Garcia drove up in a Mercedes SUV that police recognized both as being owned by Garcia, and being involved in drug activity. (Tr., p. 162, Ls. 21-25 (Corporal Abaid's testimony); p. 238, Ls. 18-20; p. 239, Ls. 4-7, 22-24.) Garcia was there for five minutes or less, then left, and Hurtado told the CI it would be "a half-hour longer." (Tr., p. 239, Ls. 6-7; p. 240, Ls. 7-8; p. 241, Ls. 10-12.)

The CI paid Hurtado for the methamphetamine, then roughly an hour later, Garcia returned in his SUV. (Tr., p. 244, Ls. 16-21; p. 242, Ls. 23-25.) Hurtado approached Garcia – still in his SUV – close enough that they could touch one another, then three or four minutes later, Hurtado gave the CI a plastic baggie of methamphetamine. (Tr., p. 253, Ls. 21-24; p. 254, Ls. 21-25; p. 255, Ls. 3-24.) Subsequent testing confirmed the substance in the bag was methamphetamine. (Tr., p. 338, Ls. 9-12; p. 341, L. 22 – p. 342, L. 2; State's Ex. 12.)

The CI's testimony established that he purchased methamphetamine, receiving it directly from Jose Hurtado. The CI's testimony also established the

following circumstances: Garcia came to the site of the drug deal twice – first, after Hurtado made a phone call, and second, just before Hurtado gave the CI the methamphetamine. The second time Garcia came to the drug deal site, he interacted with Hurtado close enough to touch. In addition, the reasonable inference from the evidence was that Hurtado did not have the methamphetamine before his interaction with Garcia, but did have it immediately thereafter. The circumstantial evidence supports the reasonable inference that Garcia provided the methamphetamine to Hurtado, thus aiding and abetting the delivery of the methamphetamine to the CI. The circumstantial evidence thus supports the remaining two elements of the crime.

The courts on appeal will not "displace the jury's right to draw justifiable inferences from the evidence," even though the same evidence could be interpreted as being consistent with defendant's innocence. State v. Slawson, 124 Idaho 753, 757, 864 P.2d 199, 203 (Ct. App. 1993). Accordingly, the Court here must not disturb the reasonable inference drawn by the jury in this case that Garcia was involved in, and did aid and abet, the delivery of methamphetamine to the CI. Under Idaho case law, Garcia has not shown a valid basis to set aside the trial court's judgment entered on the jury's verdict, or the trial court's denial of his motion to acquit. Thus, Garcia's request to vacate his conviction must be denied.

II.
Garcia Has Failed To Show The District Court Abused Its Discretion In Allowing The Partial Rereading Of The CI's Testimony

A. Introduction

During its deliberations, the jury requested to have the court reporter reread the CI's testimony from direct examination. (Tr., p. 424, Ls. 7-14.) Over defense counsel's objection, the trial court allowed the partial rereading of the CI's testimony as requested by the jury. (Tr., p. 424, L. 15 – p. 426, L. 25.) Garcia asserts this was an abuse of the trial court's discretion. (Appellant's brief, pp. 18-27.) However, Garcia has failed to meet his burden of demonstrating an abuse of discretion.

B. Standard Of Review

An appellate court reviews a trial court's evidentiary rulings for abuse of discretion. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009). Where a defendant challenges the trial court's exercise of discretion, the appellate court considers: (1) whether the trial court correctly perceived the issue as discretionary; (2) whether the trial court acted within the boundaries of its discretion and consistent with applicable legal standards; and (3) whether the trial court reached its decision through an exercise of reason. State v. Carlson, 134 Idaho 389, 396-97, 3 P.3d 67, 74-75 (Ct. App. 2000) (citation omitted).

C. In Allowing The Partial Rereading Of Martinez's Testimony The District Court Properly Exercised Its Discretion To Ensure Neither Party Was Prejudiced

Idaho courts have long held it appropriate for a trial court to allow a jury to rehear testimony during deliberations. State v. Leavitt, 44 Idaho 739, 260 P. 164 (1927); State v. Jester, 46 Idaho 561, 270 P. 417 (1928). Current Idaho law provides:

> After the jury have retired for deliberation, if there is any disagreement between them as to the testimony, . . . they must require the officer to conduct them into court . . . [upon which] the information required must be given in the presence of, or after notice to, the prosecuting attorney and the defendant or his counsel.

I.C. § 19-2204. Under that provision, if a jury makes a reasonable request for the re-reading of testimony, the trial court must attempt to meet such request. State v. Couch, 103 Idaho 205, 208, 646 P.2d 447, 450 (Ct. App. 1982). In doing so, "[t]he trial court should exercise its discretion to ensure that a party to the litigation is not prejudiced." Id.

Garcia argues the trial court failed to recognize it had discretion in deciding what testimony would be reread to the jury. (Appellant's brief, pp. 18-24.) In support, Garcia points to the trial court's comments that it was up to the jury to tell the court what they wanted to hear. (Appellant's brief, pp. 21-22; Tr., p. 425, L. 15 – p. 426, L. 4.) However, these comments reflect the court's concern that the jury's deliberations should be guided by the jury, not the court or parties.

In its deliberations, a jury engages in countless discussions about evidence or testimony that may favor one side or the other. The trial judge and

counsel are not privy to such discussions, and are not free to influence them by highlighting certain evidence over other evidence. In jury instructions, the judge told the jury, "the law does not require you to believe all the evidence." (R., p. 82.) The court further instructed:

> As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.
>
> There is no magical formula by which one may evaluate testimony. . . . In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

(R., p. 82.)

By allowing a rereading of testimony only as requested, the judge avoided directing the jury's attention to any particular evidence. The court simply ensured that the jury's request, for purposes of its deliberations, was fulfilled as required under I.C. § 19-2204. The court's comments and ruling demonstrate efforts to ensure that neither party was prejudiced, while complying with the statute.

The court's ruling was also consistent with Idaho case law, which has upheld the partial rereading of witness testimony, when requested by the jury. State v. Leavitt, 44 Idaho 739, 260 P. 164, 166 (1927). Garcia points to no authority providing otherwise. Thus, the trial court's decision allowing the partial rereading of the CI's testimony per the jury's request was within its discretion and consistent with applicable legal standards. The court arrived at its decision through an exercise of reason which included recognition that the jury should

steer its own deliberations, and also consideration of I.C. § 19-2204 and the arguments and comments of counsel. (Tr., p. 424, L. 15 – p. 427, L. 4.) Accordingly, Garcia has failed to show the trial court abused its discretion regarding the rereading of the CI's testimony.

Finally, even if this Court found the trial court erred by not causing the CI's testimony to be reread in its entirety, such error was 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)). The jury here specifically requested a limited rereading of the CI's testimony of what it needed for its deliberation. (Tr., p. 424, Ls. 7-14.) It follows that the jury believed a rereading of the unrequested portions was not necessary for its deliberation. As such, this Court can declare beyond a reasonable doubt that those unrequested portions of the CI's testimony, if read, would not have contributed to the verdict.

D. Garcia Failed To Preserve An Objection To The Rereading Of Testimony Containing Inadmissible Hearsay

Garcia asserts, for the first time on appeal, that the trial court erred in allowing the rereading of hearsay statements to which defense counsel objected during the CI's initial testimony. (Appellant's brief, pp. 24-27.) Where an appellant raises an issue not preserved through timely objection, he must demonstrate: (1) a violation of an unwaived constitutional right; (2) that the error is clear and obvious without the need to further develop the evidence regarding the error or whether the lack of objection was a tactical decision; and (3) that the

error affected the outcome of the proceedings. State v. Perry, 150 Idaho 209, 226, 245 P.3d 961, 978 (2010). Garcia cannot meet his burden in this case.

Indeed, the portion of Martinez's testimony that was reread to the jury included defense counsel's objection to hearsay. (Tr., p. 442, Ls. 24-25; see also p. 447, Ls. 9-10 (objection: not based on personal knowledge).) However, the rereading also included the trial court's ruling sustaining the objection, as well as the court's admonishment to the jury to disregard the objected-to statements. (Tr., p. 443, Ls. 1-5; see also p. 447, Ls. 11-15.) Given that the rereading included the objection, the ruling sustaining the objection, and the admonishment to disregard the objectionable statements, Garcia cannot show that any of the three elements required under Perry were satisfied. This court should therefore decline to consider this unpreserved issue.

CONCLUSION

The state respectfully requests that the Court affirm Garcia's judgment of conviction.

DATED this 11th day of October, 2013.

DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of October, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ELIZABETH ANN ALLRED
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.

DAPHNE J. HUANG
Deputy Attorney General

DJH/pm