

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45352
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR-2017-1246
)
 JOSE MANUEL PRATER,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE GEORGE A. SOUTHWORTH
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

JENNY C. SWINFORD
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Jose Manuel Prater appeals from his conviction for domestic battery in the presence of children.

Statement Of The Facts And Course Of The Proceedings

The state charged Prater with one count of domestic battery in the presence of children. (R., pp. 38-39.) At trial Julia Barnett testified that she was living with and had a relationship with Prater, who was the father of two of her three children. (Tr., p. 97, L. 1 – p. 99, L. 2.) On Christmas Eve, 2016, Prater was angry with Julia and hit and kicked her repeatedly. (Tr., p. 99, L. 3 – p. 106, L. 20.) When she tried to leave he threw an alcoholic beverage on her and threatened to report her for DUI to get her arrested and the children taken from her. (Tr., p. 106, L. 21 – p. 107, L. 20.) Rather than drive, she called her mother and sister to come get her and the children, which they did. (Tr., p. 107, L. 21 – p. 109, L. 5.)

Julia returned with the children the next day, Christmas, and there was additional violence inflicted on her by Prater. (Tr., p. 109, L. 8 – p. 114, L. 10.) She did not report the violence until the 27th, with the encouragement of co-workers who saw her injuries. (Tr., p. 114, L. 22 – p. 116, L. 5.) Julia provided a statement to Officer Hemmert and the police took pictures of her injuries. (Tr., p. 116, L. 6 – p. 124, L. 5; State's Exhibits 1-14.)

Defense counsel questioned Julia extensively about whether she had “call[ed] [Prater] out for violence” in the “hundreds, probably thousands of texts” she exchanged with Prater between “December 24th through mid-February.” (Tr., p. 141, L. 14 – p. 145,

L. 2.) Julia generally stated that she did not remember what she texted to Prater and that she was “pretty sure” she did call him out for the violence. (Id.)

The state also called Julia’s sister, Letisa Barnett, as a witness. (Tr., p. 152, L. 21 – p. 156, L. 23.) Letisa testified that she went to her sister Julia’s house on Christmas Eve and picked her and the children up, that Julia and the children were crying, and that Julia was not intoxicated. (Id.) During her testimony the prosecutor asked if she spoke with Julia when she picked her up and Letisa confirmed she had. (Tr., p. 154, Ls. 11-13.) Letisa ultimately testified that Julia told her she and Prater “got into a fight, that he threw a drink in her face, and that he called her in for a DUI.” (Tr., p. 154, L. 14 – p. 155, L. 3.)

The state’s concluding witness was Officer Hemmert, who testified that on December 27, 2016, he took Julia’s statement and photographed her bruises. (Tr., p. 157, L. 22 – p. 165, L. 11.) Officer Hemmert was allowed to testify that Julia reported that Prater had battered her on the 24th and 25th in the presence of her children and had thrown beer on her. (Tr., p. 160, L. 16 – p. 163, L. 11.)

Prater testified on his own behalf, generally claiming that Julia was the aggressor and he had not battered her. (Tr., p. 172, L. 5 – p. 213, L. 9.) Julia testified in rebuttal. (Tr., p. 214, L. 17 – p. 231, L. 5.)

The jury found Prater guilty. (R., p. 70.) The district court imposed a sentence of seven years with three years determinate, and retained jurisdiction. (R, pp. 118-19.) Prater filed a timely notice of appeal. (R., pp. 120-22, 130-33.)

ISSUE

Prater states the issue on appeal as:

Did the district court abuse its discretion by admitting Ms. Barnett's prior consistent statements to rebut a charge of recent fabrication because her motive to lie preceded her statements?

(Appellant's brief, p. 3.)

The state rephrases the issue as:

Has Prater failed to show error because:

- a. Prater has failed to show the district court abused its discretion by admitting evidence of Julia's statements to her sister, Letisa, and
- b. Prater has failed to show the district court abused its discretion by admitting evidence of Julia's statements to Officer Hemmert?

ARGUMENT

Prater Has Failed To Show That The District Court Abused Its Discretion When It Admitted Evidence Of Julia's Prior Consistent Statements To Rebut Express And Implied Charges Of Recent Fabrication

A. Introduction

Defense counsel cross-examined Julia about her preliminary hearing testimony, including where she testified the children were during the domestic violence. (Tr., p. 134, L. 10 – p. 137, L. 22.) He also cross-examined whether, in text messages to Prater sent from December 24 through February, Julia had accused him of physical violence. (Tr., p. 141, L. 14 – p. 145, L. 2.) Julia generally stated that she did not remember what she texted to Prater and that she was “pretty sure” she did call him out for the violence. (Id.) She did admit (“Yes, I guess”) stating in a text that he crossed a line by calling the police and trying to get her arrested. (Tr., p. 142, Ls. 19-23.) Defense counsel also cross-examined her about not telling officers about the violence in contacts on the 25th and/or the 26th. (Tr., p. 138, L. 12 – p. 139, L. 20.) The district court later overruled hearsay objections and allowed the prosecution to elicit testimony of Julia’s prior consistent statements (1) from Letisa about Julia’s statements on the 24th (Tr., p. 154, L. 11 – p. 155, L. 3) and (2) from Officer Hemmert about Julia’s statements on the 27th (Tr., p. 160, L. 16 – p. 163, L. 11).

On appeal Prater argues the district court erred in finding the evidence of Julia’s statements to Letisa on the 24th and her statements to Officer Hemmert on the 27th admissible as prior consistent statements. (Appellant’s brief, pp. 5-10.) Specifically, Prater asserts Julia had “the motive to lie about the alleged battery once Mr. Prater threw an alcoholic drink on her and called 911 to report a DUI,” and the statements at issue were after this incident. (Appellant’s brief, p. 9.) This argument, however, ignores most of the

express or implied charges of recent fabrication presented at trial. Consideration of all the express or implied charges of recent fabrication, instead of just the single one identified on appeal, shows the district court was within its discretion.

B. Standard Of Review

The trial court has broad discretion in determining the admissibility of evidence. State v. Harris, 141 Idaho 721, 724, 117 P.3d 135, 138 (Ct. App. 2005). Review of a trial court's hearsay rulings "is limited to determining whether" the district court's decision was "within the outer boundaries of its discretion," "consistent with" applicable legal standards, and "reached through an exercise of reason." In re Estate of Conway, 152 Idaho 933, 941, 277 P.3d 380, 388 (2012).

C. Prater Has Shown No Error In The Admission Of Julia's Prior Consistent Statements

Hearsay is an out-of-court statement offered "to prove the truth of the matter asserted." I.R.E. 801(c). Hearsay is generally not admissible. I.R.E. 802. A prior statement by a witness is not hearsay if "consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or, to rehabilitate the declarant's credibility as a witness when attacked on another ground." I.R.E. 801(d)(1)(B) (2016).

Where admission of evidence under this rule is premised upon evidence the witness had a motive to lie, this exception to what is hearsay "only permits introduction of out-of-court statements that were made prior to the time when the declarant would have a motive to lie." State v. Joy, 155 Idaho 1, 14, 304 P.3d 276, 289 (2013). Where admission of the evidence is premised upon a claim that testimony was different than prior statements by

the witness, the evidence is properly “offered to rebut an express charge of recent fabrication.” State v. Howard, 135 Idaho 727, 732, 24 P.3d 44, 49 (2001). Application of these standards to all the express or implied charges of recent fabrication, instead of the single such charge identified by Prater on appeal, shows the district court did not abuse its discretion.

1. Letisa’s Testimony About What Julia Told Her On December 24 Was Admissible As A Prior Consistent Statement
 - a. Prater Has Shown No Abuse Of Discretion In The Admission Of Letisa’s Testimony About Julia’s Statements

The state presented Julia’s testimony about the violence she suffered at Prater’s hands on December 24 and 25. (Tr., p. 97, L. 1 – p. 133, L. 5.) On direct, Julia testified that she contacted her sister, Letisa, on the 24th for Letisa to come pick up her and the children. (Tr., p. 107, L. 21 – p. 109, L. 7.) At this time the state presented no evidence that Julia told Letisa about the events in question. (Tr., p. 97, L. 1 – p. 133, L. 5.) In cross-examination the defense tried to impeach Julia regarding whether she testified previously in the case that the children were present during the violence; whether she mentioned the violence in text messages exchanged with Prater from December 24 through the following February; and with the fact she did not tell officers about the violence in contacts on December 25 or 26. (Tr., p. 134, L. 10 – p. 137, L. 22; p. 138, L. 7 – p. 145, L. 2.)

The evidence presented creates, or attempts to create, the inference that Julia’s version of the events of December 24, told from that date through February, did not include violence by Prater, and the first time she told of the violence was as late as the first time

she testified.¹ Evidence that the very first recitation of the events on December 24 included the violence was evidence of a “[p]rior statement” by Julia that was “consistent” with her testimony and “offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive.” I.R.E. 801(d)(1)(B).

Prater argues that because the statements to Letisa were made after he threw an alcoholic beverage on Julia and called the police to report her as DUI the statements were not made prior to the time she had a motive to lie. (Appellant’s brief, p. 9.) Were the incident with the thrown drink and call to police the sole relevant motive to lie suggested by the evidence Prater’s argument might have merit. However, it was far from the sole motive. Additional motives suggested by the evidence arising after Julia’s December 24 statements to Letisa include the additional violence on December 25 or 26 (Tr., p. 109, L. 8 – p. 114, L. 10); the breakup on December 25 or 26 when Prater left the home (Tr., p. 139, L. 23 – p. 140, L. 10; see also Tr., p. 198, Ls. 3-17); the encouragement of co-workers to report the source of the bruising they observed on December 27 (Tr., p. 114, L. 22 – p. 116, L. 5); and the contentious nature of Julia’s relationship with Prater and the “40 or 50 arguments via text” after the incident through February (Tr., p. 141, L. 14 – p. 145, L. 2). Indeed, the evidence that Julia did not tell police about the violence in an encounter on December 25 or 26 (Tr., p. 112, L. 13 – p. 113, L. 6; p. 138, L. 12 – p. 140, L. 14) strongly suggests that the drink toss and DUI report on December 24 did not alone create sufficient motive to fabricate a story that Prater had battered her.

¹ As set forth below, there was evidence that Julia told Officer Hemmert about the violence on December 27, three days after the statement to Letisa. This does not change the analysis that the first recitation of the events by Julia was a prior consistent statement.

At trial Prater levelled several express or implied charges of recent fabrication, including but clearly not limited to his attempt to have her arrested for DUI. Because the evidence created more than one express or implied charge of recent fabrication that Prater could exploit, and those charges related to events stretching months after the events in question, the district court did not abuse its discretion in admitting Letisa's testimony about Julia's statements on December 24 about the events that had just happened. Prater's attempt on appeal to suggest that the attempt to have Julia arrested was the only event providing potential motive to fabricate simply ignores the record and is inconsistent with what he presented at trial. He has failed to show an abuse of discretion.

b. Even If Erroneous, Admission Of Letisa's Testimony About Julia's Statements Was Harmless

Even when a trial court has abused its discretion, such "abuse of discretion may be deemed harmless if a substantial right is not affected. In the case of an incorrect ruling regarding evidence, this Court will grant relief on appeal only if the error affects a substantial right of one of the parties." State v. Shackelford, 150 Idaho 355, 363, 247 P.3d 582, 590 (2010); accord I.R.E. 103(a) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected . . ."); I.C.R. 52 ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded."). "An error is harmless if a reviewing court can find beyond a reasonable doubt that the jury would have reached the same result without the admission of the challenged evidence." State v. Vondenkamp, 141 Idaho 878, 887, 119 P.3d 653, 662 (Ct. App. 2005). To show harmless error in the admission of inadmissible evidence "the

burden is on the State to prove that the alleged error did not contribute to the verdict obtained.” State v. Stell, 162 Idaho 827, 830, 405 P.3d 612, 615 (Ct. App. 2017).²

Letisa testified that, when she picked up Julia on December 24, Julia “said that [she and Prater] had recently got into a fight, that he threw a drink in her face, and that he called her in for a DUI.” (Tr., p. 155, Ls. 1-3.) Prater confirmed that they had an argument that turned physical (albeit he claimed she hit him), that when she tried to leave he called in to report that she was DUI, and only denied having thrown the drink in her face. (Tr., p. 172, L. 7 – p. 190, L. 11; p. 202, L. 11 – p. 205, L. 5; p. 208, L. 19 – p. 211, L. 1.) Given the overlap in this testimony, there was no prejudice. Moreover, the most important and telling evidence in this case was the pictures of the victim’s bruising. (State’s Exhibit 1-14.) Beyond a reasonable doubt the one sentence of testimony that Julia told her sister that she had a fight with Prater and that he had thrown a drink on her and called in a DUI report did not contribute to the verdict and was harmless.

2. Officer Hemmert’s Testimony About What Julia Told Him On December 27 Was Admissible As A Prior Consistent Statement
 - a. Prater Has Shown No Abuse Of Discretion In The Admission Of Officer Hemmert’s Testimony About Julia’s Statements

Applying the legal standards set forth above, the district court properly exercised its discretion in admitting the testimony of Officer Hemmert about Julia’s statements on December 27 as prior consistent statements. As noted above, Prater presented multiple possible motives for Julia to lie, including multiple text arguments extending into the

² The district court made two rulings on two objections to different evidence of different prior consistent statements. (Tr., p. 154, L. 11 – p. 155, L. 3; p. 160, L. 16 – p. 163, L. 11.) Prater has not invoked the cumulative error doctrine. (See generally Appellant’s brief.) Therefore, the proper harmless error analysis is of each claim of error separately.

following February. Prater's argument that the only motive to fabricate arose from Julia's claim that Prater threw a drink on her and called her in for a DUI simply ignores the multiple other possible motives to lie Prater relied on in trial.

b. Any Error In Admitting Officer Hemmert's Testimony About Julia's Statements Is Harmless

Even if the district court had abused its discretion by admitting evidence of Julia's statements to Officer Hemmert any error was harmless. Officer Hemmert testified that Julia told him that Prater had battered her, the visible bruising on her face and body was the result of the battering, that her children were present, and that Prater had thrown beer on her and called in a report of a DUI. (Tr., p. 162, L. 7 – p. 163, L. 11.) In addition to the contradiction of beer versus a liquor-based drink, the defense also brought out that Officer Hemmert contradicted Julia's testimony about whether she stated that she bruised easily. (Compare Tr., p. 140, Ls. 15-21 with Tr., p. 165, Ls. 5-7.) Because the only differences in Officer Hemmert's testimony about Julia's statements and Julia's testimony about the events in question were differences that benefited the defense, and because, as stated above, the most important evidence was the photographic evidence of the victim's bruises, the errors were necessarily harmless.

Moreover, the testimony was largely redundant. In direct examination, without objection by Prater, Julia testified that she told Officer Hemmert the truth and everything she could remember that happened. (Tr., p. 116, Ls. 6-24.) The jury was informed that Julia made a consistent prior statement to Officer Hemmert in evidence admitted without objection.

Finally, if the jury believed, as claimed by Prater, Julia was motivated to lie by his reporting that Julia was DUI, then the jury would necessarily reject both her trial testimony

and her statements to Officer Hemmert equally. The prior consistent statement gave them no additional reason to credit her testimony. In addition, Julia's statements to Officer Hemmert were not more expansive than her testimony. Other than refuting claims that arguments or other developments in her relationship with Prater after talking to Officer Hemmert caused her to be biased, the evidence adds and refutes nothing. It was not prejudicial to Prater. Beyond a reasonable doubt the evidence did not contribute improperly to the verdict and the jury would have reached the same result without the admission of the challenged evidence.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 6th day of July, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of July, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd