

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45608
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR-2016-10755
)
 STEVEN MICHAEL CHAMBERS,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE SCOTT L. WAYMAN
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

MARK W. OLSON
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**

LARA E. ANDERSON
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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RULES

I.R.E. 412 passim

STATEMENT OF THE CASE

Nature Of The Case

Steven Michael Chambers appeals from the judgment of conviction entered upon his conditional guilty plea to battery with intent to commit a serious felony.

Statement Of The Facts And Course Of The Proceedings

In June 2016, N.S., who lived with assistance for her mental disabilities at a group home, met Chambers at a church event. (R., pp.17, 22-23, 35-36.) They exchanged phone numbers and communicated throughout the night. (R., pp.17, 22.) This communication included sexually suggestive photos and messages sent by both individuals. (R., pp.24, 26-27.)

Early the next morning, N.S. went to Chambers' residence. (R., pp.17-18, 22-23.) There, N.S. and Chambers were kissing in the hallway outside of Chambers' bedroom when Chambers told N.S. to take her clothes off. (R., p.17.) Chambers punched N.S. in the stomach when N.S. refused, and then pushed her into his bedroom. (Id.) There, Chambers forcibly raped N.S. (Id.) Afterwards, N.S. ran out the front door, called 911, and reported the incident to authorities. (R., pp.17-18.) N.S. acknowledged to authorities that she had deleted the sexually explicit photos and messages from her phone prior to calling 911. (R., p.24.)

A detective interviewed Chambers. (R., pp.26-29.) Chambers told the officer that his mother had used drugs when she was pregnant with him, that he did not learn to speak until he was 12 or 13, but that he had no disabilities other than a speech impediment. (R., p.26.) Chambers acknowledged having sex with N.S., but initially asserted that it was consensual. (R., pp.26-27.) Chambers also denied punching N.S. in the stomach. (R., p.27.) Chambers invited the officer to view the messages and photos sent between himself and N.S. (Id.) Later in the interview, Chambers' demeanor changed and he admitted to punching and forcibly raping N.S.

(R., pp.28-29). He also admitted to placing his hand over her mouth to keep her quiet during the rape. (R., p.28.) The state investigated further (R., pp.28-46, 58-61), and ultimately charged Chambers with forcible rape (R., pp.93-94).

Chambers filed a motion to permit the defense to introduce evidence related to N.S.'s past sexual behavior pursuant to I.R.E. 412(b)(2)(C) (2017).¹ (R., pp.129-143.) The state also filed a motion in limine to exclude the same evidence. (R., pp.148-152.) Specifically, Chambers sought a court order permitting him to present evidence at trial concerning a rape allegation N.S. made against another individual in December 2016, approximately six months after the charged conduct occurred in the present case. (R., pp.129-143.) In this December 2016 incident, N.S. reported to authorities that an individual whom she had been staying with had raped her. (R., pp.133-134.) The accused individual asserted that he had engaged only in consensual sex with N.S. (R., pp.136-137.) The individual was cooperative with authorities and passed a polygraph test in which he denied raping N.S. (R., pp.138-140.) Based on the information provided, the investigating officer declined to arrest the accused individual.² (R., p.137.)

After a hearing at which no evidence was presented, the district court granted the state's motion in limine and denied Chambers' motion for an order permitting him to present evidence related to the December 2016 incident. (R., pp.168-169; Tr., p.32, L.2 – p.39, L.1.) The court first concluded that the evidence was not admissible pursuant to the I.R.E. 412(b)(2)(C) exception that provides for the potential admission of evidence of "false allegations of sex crimes

¹ I.R.E. 412 was amended in 2018. (See 3/26/18 Idaho Supreme Court Order "In Re: Adoption of Newly Formatted Idaho Rules of Evidence.") Hereinafter, the state refers to the former version of the rule that was in effect at the time of the relevant hearings in this case simply as "I.R.E. 412."

² A review of the iCourt portal reveals that the accused individual was not subsequently charged with rape or any other crimes related to the December 2016 incident with N.S.

made at an earlier time” because the December 2016 incident occurred approximately six months *after* the charged conduct. (Tr., p.36, L.22 – p.38, L.2.) The court further concluded, in the alternative, that even if the I.R.E. 412(b)(2)(C) exception applied to the evidence, it was still inadmissible pursuant to I.R.E. 412(c)(3) because the probative value of the evidence was outweighed by the danger of unfair prejudice.³ (Tr., p.38, Ls.2-21.)

Chambers entered a conditional Alford⁴ plea to an amended charge of felony battery with the intent to commit a serious felony. (Tr., p.42, L.14 – p.50, L.7.) Chambers preserved his right to challenge the district court’s ruling on the I.R.E. 412(b)(2)(C) issue. (R., p.166; Tr., p.42, Ls.14-18.) The district court imposed a unified 10-year sentence with two years fixed, but suspended the sentence and placed Chambers on probation for three years. (R., pp.175-185; Tr., p.61, Ls.4-14.) Chambers timely appealed. (R., pp.186-189.)

³ Chambers also moved to suppress his confessions made to the investigating detective on the ground that they were coerced. (R., pp.102-103, 114-115; Tr., p.5, L.2 – p.30, L.10.) However, it appears that Chambers entered his conditional guilty plea before the district court made a ruling on this motion.

⁴ North Carolina v. Alford, 400 U.S. 25 (1970).

ISSUE

Chambers states the issue on appeal as:

Did the district court err in granting the State's motion to exclude evidence relating to [N.S.'s] subsequent claim of rape against Mr. Chase?

(Appellant's brief, p. 9.)

The state rephrases the issue as:

Has Chambers failed to show the district court erred by excluding evidence related to N.S.'s December 2016 rape accusation?

ARGUMENT

Chambers Has Failed To Show The District Court Erred By Excluding Evidence Related To N.S.'s December 2016 Rape Accusation

A. Introduction

Chambers asserts that the district court erred by granting the state's motion in limine to exclude evidence relating to N.S.'s December 2016 rape accusation which occurred approximately six months after the charged conduct in the underlying case, and by denying his own motion for an order permitting the admission of the same evidence. (Appellant's brief, pp.10-28.) Specifically, Chambers contends that the court erred because: (1) I.R.E. 412(b)(2)(C), the rape shield rule's "false allegation" exception, contains no temporal limits requiring that the false allegation occur prior to the alleged offense; (2) N.S.'s December 2016 accusation was admissible pursuant to the I.R.E. 412(b)(1) exception to the rape shield rule because exclusion of the evidence violated his Sixth Amendment right to present a defense; and (3) admission of N.S.'s December 2016 accusation was not precluded by the rape shield rule in the first place because the accusation did not constitute "past sexual behavior" pursuant to I.R.E. 412(b). (Id.)

Chambers' contentions fail. First, Chambers failed to preserve any argument either that exclusion of N.S.'s December 2016 accusation violated his constitutional rights, or that admission of the accusation did not fall within the scope of the rape shield rule to begin with. Further, an analysis of I.R.E. 412(b)(2)(C) reveals that the phrase "earlier time," as contained in that subsection, imposes a temporal requirement that the proffered accusation must have occurred before the charged conduct in order to be subject to that exception to the rape shield rule.

B. Standard Of Review

The interpretation of court rules and statutes presents a question of law over which appellate courts exercise free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); Eby v. State, 148 Idaho 731, 734, 228 P.3d 998, 1001 (2010).

The decision whether to admit evidence at trial is generally within the province of the trial court. A trial court's determination that evidence is supported by a proper foundation is reviewed for an abuse of discretion. State v. Gilpin, 132 Idaho 643, 646, 977 P.2d 905, 908 (Ct. App. 1999). Therefore, a trial court's determination as to the admission of evidence at trial will only be reversed where there has been an abuse of that discretion. State v. Zimmerman, 121 Idaho 971, 973-974, 829 P.2d 861, 863-864 (1992).

C. Chambers Failed To Preserve His Constitutional And Rape Shield Rule Applicability Arguments For Appeal

It is well-settled that Idaho's appellate courts "will not consider issues not raised in the court below." State v. Mosqueda, 150 Idaho 830, 833, 252 P.3d 563, 566 (Ct. App. 2011) (citing State v. Wheaton, 121 Idaho 404, 407, 825 P.2d 501, 504 (1992)). An objection to the admission of evidence on one basis does not preserve a separate and different basis for exclusion of the evidence. State v. Norton, 134 Idaho 875, 880, 11 P.3d 494, 499 (Ct. App. 2000).

The Idaho appellate courts have recently reiterated that appellate court review is limited to the evidence, theories, and arguments that were presented below and that parties are precluded from presenting legal questions and theories on appeal different than the ones they presented to the lower court. See, e.g., State v. Dahl, 162 Idaho 541, 548, 400 P.3d 629, 636 (Ct. App. 2017); State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017); State v. Cohagan, 162 Idaho 717, 721, 404 P.3d 659, 663 (2017); State v. Hoskins, ___ Idaho ___, ___ P.3d ___, 2018

WL 4169337 (Ct. App. 2018) (not yet final).

In State v. Briggs, 162 Idaho 736, 737-741, 404 P.3d 1287, 1288-1292 (Ct. App. 2017), the Idaho Court of Appeals applied these preservation principles to an appellant's challenge to a district court's I.R.E. 412 determination. Briggs filed a motion in limine for an order permitting him to present trial evidence pursuant to I.R.E. 412(b)(2)(D), the rape shield rule exception for "sexual behavior with parties other than the accused which occurred at the time of the event giving rise to the sex crime charged." Briggs, 162 Idaho at 738, 404 P.3d at 1289. The district court denied the motion. Id.

On appeal, Briggs argued that the district court's exclusion of the evidence violated his right to confront witnesses pursuant to I.R.E. 412(b)(1) and the Sixth Amendment of the United States Constitution. Id. at 737, 404 P.3d at 1288. However, Briggs did not articulate to the district court that he had a constitutional right to present the evidence in question or specify any different or additional bases under I.R.E. 412 to admit the evidence. Id. at 738, 404 P.3d at 1289.

The Idaho Court of Appeals affirmed the convictions and held that Briggs failed to preserve his appellate arguments. The Court first held that Briggs' I.R.E. 412(b)(1)/Sixth Amendment claim was not cognizable under the Idaho fundamental error standard set forth in State v. Perry, 150 Idaho 209, 245 P.3d 961 (2010). Id. at 739, 404 P.3d at 1290. The Court concluded that "[i]t is not unobjected-to error when a party articulates a specific basis to admit evidence, receives a ruling, and then fails to offer a different basis on which to admit the evidence." Id. The actions of Briggs' trial attorney did not qualify as unobjected-to error that could be analyzed pursuant to Perry because:

Trial counsel filed a motion in limine, arguing a very specific ground on which the district court should admit evidence of the victims' sexual history, which the district court denied. When the evidence was excluded, trial counsel did not offer a different basis for its admission. Thus, this is not a case where trial counsel

failed to object; instead, this is a case where trial counsel failed to offer a basis upon which the evidence could be admitted. Briggs’s claim on appeal is not that the State or the district court made an error to which no objection was made. Rather, Briggs is claiming his attorney failed to argue a particular basis on which to admit the evidence, thus constituting “unobjected-to error.” Here, however, there was no error to which trial counsel could object because he could not object to his own inaction. This is not the type of circumstance of “unobjected-to error” contemplated by the *Perry* opinion. The failure to offer a specific evidence rule as a basis to admit or exclude evidence is not unobjected-to error for purposes of a fundamental error analysis.

Id. (footnote omitted).

The Court further concluded that, even if it could apply the Perry fundamental error standard to Briggs’ claim, Briggs could not satisfy the first Perry prong (demonstration of a violation of an unwaived constitutional right). Id. The Court relied upon State v. Jackson, 151 Idaho 376, 379-380, 256 P.3d 784, 787-788 (Ct. App. 2017), in which the Court of Appeals held that Jackson failed to satisfy the first prong of Perry where he had sought exclusion of evidence pursuant to I.R.E. 404(b) to the district court, but then asserted for the first time on appeal that the district court’s exclusion of the same evidence violated his constitutional due process rights. Id. at 739-740, 404 P.3d at 1290-1291. In Jackson, the Court of Appeals concluded:

To hold that the presentation of evidence and associated argument in violation of an evidentiary rule satisfies the constitutional violation element of *Perry* because all evidentiary error implicates due process would, in our view, virtually eviscerate the first prong of the *Perry* standard and contravene the limits that *Perry* places on fundamental error review.

Jackson, 151 Idaho at 379-380, 256 P.3d at 787-788.

The rationale of Briggs and Jackson precludes appellate review of Chambers’ appellate claims, in this case, that the exclusion of N.S.’s December 2016 accusation violated his constitutional rights, or that admission of the accusation did not fall within the scope of the rape shield rule to begin with. Chambers presented neither argument to the district court. (See R., pp.129-144; Tr., p.33, L.14 – p.36, L.12.) These arguments are therefore waived on appeal.

Further, by arguing to the district court only that one of the rape shield rule *exceptions* (I.R.E. 412(b)(2)(C)) applied to the proffered evidence, Chambers essentially conceded that the evidence, absent application of this exception, was inadmissible pursuant to the rape shield rule.

Finally, as in Briggs and Jackson, Chambers' constitutional argument, raised for the first time on appeal, is non-cognizable under the Perry fundamental standard. Chambers' own failure below to offer a particular ground to exclude the evidence is not unobjected-to-error for purposes of a Perry fundamental error analysis. Likewise, as in Briggs and Jackson, even if these appellate claims could be analyzed under Perry, Chambers' attempt to re-frame his evidentiary claim (as presented to the district court), as a constitutional claim for the first time on appeal cannot satisfy the first Perry prong.

Chambers failed to preserve his claims that the district court's exclusion of N.S.'s December 2016 accusation violated his constitutional rights, or that admission of the accusation did not fall within the scope of the rape shield rule to begin with. These claims are also not cognizable in a Perry fundamental error analysis and cannot satisfy the first prong of that standard in any event. This Court should therefore decline to reach the merits of these claims.

D. The I.R.E. 412(b)(2)(C) False Accusation Exception To The Rape Shield Rule Contains A Temporal Requirement Which Properly Resulted In The Exclusion Of N.S.'s December 2016 Accusation

It is axiomatic and long-established that a statute or rule will be interpreted according to its plain language and that where the language is plain the court will not resort to principles of statutory construction. State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003); State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996); see also Johnson v. State, 162 Idaho 213, 217, 395 P.3d 1246, 1250 (2017) ("In the absence of a statutory definition, the language of a statute should be given its plain, usual and ordinary meaning." (quoting Albee v. Judy, 136 Idaho

226, 231, 31 P.3d 248, 253 (2001)).

When the language of the statute or rule is capable of more than one reasonable construction it is ambiguous. Carrier v. Lake Pend Oreille Sch. Dist. No. 84, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006). “An alternative interpretation that is unreasonable would not make it ambiguous.” Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 896, 265 P.3d 502, 509 (2011) (citation omitted). An ambiguous statute or rule must be construed to mean what the legislature intended it to mean. Carrier, 142 Idaho at 807, 134 P.3d at 658. To ascertain legislative intent, courts examine not only the literal words of the statute or rule, but also the reasonableness of the proposed interpretations, the policy behind the statute or rule, and its legislative history. Id. at 807-808, 134 P.3d at 658-659.

Further, “[i]n construing a statute, this Court will not deal in any subtle refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to its provisions.” State v. Neal, 159 Idaho 439, 445, 362 P.3d 514, 520 (2015) (quotations and citation omitted). Thus, “when interpreting a statute, every effort should be made to give meaning to each word so as not to render any word superfluous or without meaning.” Barringer v. State, 111 Idaho 794, 803, 727 P.2d 1222, 1231 (1986) (citation omitted).

At the time of the relevant proceedings in the underlying case, I.R.E. 412(b), the Idaho “rape shield rule,” provided that, “[n]otwithstanding any other provision of law, in a criminal case in which a person is accused of a sex crime, evidence of a victim’s past sexual behavior...is not admissible.” Idaho Rule of Evidence 412(b) enumerates several exceptions to the rape shield rule’s general preclusion of applicable evidence, including an exception for evidence of “false allegations of sex crimes made at an *earlier time*.” I.R.E. 412(b)(2)(C) (emphasis added).

Should evidence fall under the I.R.E. 412(b)(2)(C) “false evidence” exception, it still may not be admitted at trial unless: (1) the defendant makes a written motion, accompanied by a written offer of proof, requesting permission to introduce the evidence; (2) the district court determines, after a hearing, that the “condition of fact” for the exception is fulfilled, that is, the court concludes that the proffered evidence is evidence of a false allegation; *and* (3) the probative value of the evidence outweighs the danger of unfair prejudice. I.R.E. 412(c)(1), (2), (3).

In this case, the district court concluded that the I.R.E. 412(b)(2)(C) “false accusation” exception to the rape shield rule did not apply to N.S.’s December 2016 accusation because the accusation occurred *after* the charged conduct in the underlying case occurred. (Tr., p.36, L.13-p.38, L.2.) An analysis of the I.R.E. 412(b)(2)(C) exception reveals that the district court correctly excluded the evidence.

As noted above, I.R.E. 412(b)(2)(C) provides that evidence of “false allegations of sex crimes made at an *earlier time*” (emphasis added), may permit the admission of such evidence that would otherwise be excluded by the rape shield rule. While the phrase “past sexual behavior,” as utilized in I.R.E. 412(a), (b), (b)(2)(A), (b)(2)(B), and (c)(1), is expressly defined in the rule as “sexual behavior other than the sexual behavior with respect to which the sex crime is alleged” (I.R.E. 412 (d)), the term “earlier time” in I.R.E. 412(b)(2)(C) is not expressly defined in the rule at all. Further, I.R.E. 412 does not otherwise expressly indicate whether the phrase “earlier time” requires the purported false accusation to have occurred “earlier” than the charged conduct, or simply requires the purported false accusation to have occurred “earlier” than the trial at which the evidence is presented. Because either construction is reasonable, the phrase “earlier time” in I.R.E. 412(b)(2)(C) is ambiguous.

The only construction of I.R.E. 412(b)(2)(C) that would give any meaning to the term “earlier time,” and which would not render that term superfluous, is a construction that interprets the term as imposing the temporal requirement that the purported false accusation must have occurred “earlier” than the charged crime, rather than simply “earlier” than the jury trial. Certainly, a defendant could not present evidence, at trial, of purported false accusation that occurred *after* the time of the trial. The “earlier time” language would thus be superfluous and have no meaning if it required only that the purported false accusation occurred “earlier” than the trial. Under such a construction, the exception would operate exactly the same as if it merely applied to “false allegations of sex crimes,” without any qualifier that the accusation had to have been made “at an earlier time.”

Further, in the amendment to I.R.E. 412(b)(2)(C) that became effective July 1, 2018, a second term indicating the existence of a temporal requirement was added. “[F]alse allegations of sex crimes made at an earlier time,” as provided in the 2017 version of the subsection, became “an alleged victim’s *prior* false allegations of sex crimes made at an *earlier time*,” following the 2018 amendment (emphasis added). This 2018 amendment was intended to, in part, “simplify, clarify and modernize the language [of the Idaho Rules of Evidence].” (3/26/18 Idaho Supreme Court Order “In Re: Adoption of Newly Formatted Idaho Rules of Evidence.”) Rather than identifying any superfluous language and removing it, this amendment instead reiterated the temporal requirement that the purported false accusation must have occurred before the charged conduct.

On appeal, Chambers notes that, generally, “[e]vidence related to a witness’s credibility that comes into existence after an alleged crime is still probative at trial because it is *during the trial (or other evidentiary hearing)* that credibility is assessed and the evidence weighed by the

jury.” (Appellant’s brief, p.17 (emphasis in original).) However, while evidence that meets the requirements of an I.R.E. 412 exception *may* be utilized to impeach the credibility of a testifying victim, the rule does not require that a victim testify at all in order for the exceptions to apply. Instead, the I.R.E. 412 exceptions provide not merely a grounds for witness impeachment, but an opportunity for the defendant to admit substantive evidence tending to refute the victim’s *underlying accusation* that initiated the criminal case to begin with. In other words, it is not a victim’s trial testimony which is directly addressed by the I.R.E. 412 exceptions, it is the victim’s pretrial accusation which resulted in criminal charges against the defendant. A victim’s actions which occurred *before* the charged conduct occurs are more probative to the veracity of the victim’s pretrial accusation that initiated the criminal investigation than are the actions of the victim that occurred sometime later.⁵ Therefore, the district court correctly interpreted the “earlier time” term in I.R.E. 412(b)(2)(C) as containing a temporal requirement, and correctly concluded that this exception to the rape shield rule did not apply to N.S.’s December 2016 accusation.

In the alternative, even if the district court erred in interpreting the statute, it still correctly excluded the evidence upon the alternative ground that the probative value of the evidence did not outweigh the danger of unfair prejudice, as required for admission by I.R.E.

⁵ Additionally, while the state does not concede that the record affirmatively demonstrates that N.S.’s December 2016 accusation was false, one underlying policy consideration that supports the temporal requirement of the “false accusation” exception to the rape shield statute is that the trauma of a legitimate rape or other sexual crime may precipitate a victim’s subsequent false accusation, particularly where the victim is a child or an individual with a mental disability or mental health issue. *See, e.g., State v. LeClair*, 730 P.3d 609, 616 (Or. Ct. App. 1986) (“The court noted that the trauma of an actual incident of sexual abuse can precipitate a child’s false accusations of subsequent abuse.”); *State v. Ellsworth*, 709 A.2d 768, 774 (N.H. 1988) (“Further, the probative value of this evidence [of subsequent allegations made by the victim] is weak because at most it shows that as a result of the attention he received *after* making the allegations against the defendant, the victim later made false allegations of relatively minor infractions at Pine Haven.”) (emphasis in original, citations omitted).

412(c)(3). As argued by the state (R., pp.148-152), and as the district court concluded (Tr., p.38, Ls.2-21), the admission of N.S.'s accusation against a separate individual which occurred six months after the charged conduct would have created a substantial risk of confusing and misleading the jury. Further, as discussed above, even if I.R.E. 412(b)(2)(C) does not contain a temporal requirement, the fact that the December 2016 accusation occurred six months after the charged conduct renders those subsequent accusations, at the very least, less probative of the veracity of N.S.'s June 2016 allegations against Chambers than allegedly false accusations that preceded the charged conduct.

Finally, should this Court determine that the district court erred *both* by interpreting I.R.E. 412(b)(2)(C) as including a temporal requirement, *and* by concluding that the probative value of the proffered evidence was not outweighed by the danger of unfair prejudice, this case should be remanded for determination of the other requirement for admission of evidence pursuant to an I.R.E. 412 exception – whether the proffered evidence was, factually, evidence of “false accusations of sex crimes.” I.R.E. 412 (c)(2).

The “earlier time” term, as utilized in I.R.E. 412(b)(2)(C), imposes a temporal requirement on evidence which a defendant seeks to admit under that exception. Because the proffered evidence in this case, N.S.'s 2016 rape accusation, occurred after the underlying charged conduct, it was not subject to the false accusation exception to the rape shield rule. Therefore, Chambers has failed to show that the district court erred in excluding the evidence on this basis.

CONCLUSION

The state respectfully requests that this Court affirm Chambers' conviction for battery with intent to commit a serious felony.

DATED this 26th day of October, 2018.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of October, 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:

LARA E. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd