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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45800**
Plaintiff-Respondent,	)	
	)	**Twin Falls County Case No.**
v.	)	**CR42-2017-5924**
	)	
RANDY MICHAEL EVANS,	)	
AKA RANDY MICHAEL EVANS, III,	)	
	)	
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 TWIN FALLS

HONORABLE NED C. WILLIAMSON
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Randy Michael Evans appeals from his judgment for battery with intent to commit murder, with a firearm enhancement.

Statement Of The Facts And Course Of The Proceedings

The state charged Evans with battery with intent to commit murder, with a firearm enhancement. (R., pp. 90-92, 189-91, 204-05.) The case proceeded to jury trial. (R., pp. 206-19.) The evidence at trial showed that Evans attacked his ex-wife, Cheyann Lundstrom, with whom he was engaged in a custody battle for their son, and shot her three times with a handgun. (Trial Tr., p. 184, L. 20 – p. 204, L. 10.) At the conclusion of trial, the jury found Evans guilty. (R., p. 221.) The district court imposed a sentence of 35 years with 30 years determinate and entered judgment. (R., pp. 262-66.) Evans filed a timely notice of appeal. (R., pp. 272-76, 292-97.)

Evans filed a Rule 35 motion for leniency. (R., pp. 307-10.) The district court denied the motion. (Supp. R., pp. 14-21.)

ISSUES

Evans states the issues on appeal as:

I. Did the district court err in denying Mr. Evan's [sic] motion for a mistrial?

II. Did the district court abuse its discretion when it imposed, upon Mr. Evans, a unified sentence of thirty-five years, with thirty years fixed following his conviction for battery with intent to commit murder?

III. Did the district court abuse its discretion when it denied Mr. Evans's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

1. Has Evans failed to show error in the denial of the motion for a mistrial based on a witness's comment that she warned Evans he would go back to prison if he followed through with his plan to kill his ex-wife?

2. Has Evans failed to show an abuse of sentencing discretion?

ARGUMENT

I.
Evans Has Failed To Show Error In The Denial Of The Motion For A Mistrial

A. Introduction

At trial, Kayla Colson testified that she was good friends with Evans. (Trial Tr., p. 362, L. 4 – p. 364, L. 10.) Evans told Colson of his "plans to harm [Cheyann], plans to plant drugs in [her] house and get Cheyann thrown back in jail," and plans to "snipe her" "with a gun" and "do something destructive." (Trial Tr., p. 364, L., 21 – p. 366, L. 7.) When asked if she tried "to dissuade him from any of this," Colson testified she "would tell him that if he did anything like that, he would get caught and end up back in prison and then he —." (Trial Tr., p. 366, Ls. 12-15.)

The defense immediately objected, and the district court instructed the jury to disregard any testimony about prison. (Trial Tr., p. 266, Ls. 16-25.) Shortly thereafter, the defense moved for a mistrial. (Trial Tr., p. 369, L. 17 – p. 371, L. 7.) The court reviewed the testimony and its curative instructions. (Trial Tr., p. 371, L. 8 – p. 372, L. 7.) It concluded that the statement was a "slip-up or an innocent mistake by the witness," that the prosecution did nothing to adduce the testimony about prison, and that the entire problem was her use of the word "back." (Trial Tr., p. 372, Ls. 8-12; p. 374, Ls. 12-15; p. 391, L. 18 – p. 392, L. 9.)

The district court delayed its ruling until after the presentation of evidence. (Trial Tr., p. 474, Ls. 2-6.) It reviewed the circumstances leading to the motion and the arguments of the parties, and addressed the question of whether the statement "'back in prison' would deprive Mr. Evans of a fair trial in light of the record." (Trial Tr., p. 474, L. 7 – p. 478, L. 21.) The district court considered its options. (Trial Tr., p. 478, L. 22 – p. 479, L. 4.) It

applied three factors from applicable cases: first it considered the strength of the evidence, concluding the state had presented "a strong case" to which the potential prejudice "pales in comparison." (Trial Tr., p. 479, L. 5 – p. 480, L. 20.) Second, the district court found the statement "significant." (Trial Tr., p. 480, Ls. 21-25.) Finally, it considered the curative instructions, which were broad and prompt. (Trial Tr., p. 481, Ls. 1-4.)

The district court denied the motion for mistrial, concluding the prejudice was cured and that even without the curative instructions the trial would be fair. (Trial Tr., p. 481, Ls. 5-11.)

On appeal Evans argues the district court erred because he was "deprived … of a fair trial." (Appellant's brief, p. 6.) He first erroneously argues that, rather than review the district court's determination that a fair trial could still be had despite the statement, this Court should assume the district court erred and require the state to demonstrate harmless error on appeal. (Appellant's brief, pp. 5-6, 9.) This argument is without any support in the law. Evans argues alternatively that if this Court should apply the correct legal standard it should still find that he was denied a fair trial. (Appellant's brief, pp. 9-10.) This argument does not withstand scrutiny because the district court correctly concluded Evans was not denied a fair trial under the circumstances of this case.

B. Application Of The Correct Legal Standards Shows No Error

The standard applied by the district court to a mistrial motion is set forth by rule: "A mistrial may be declared on motion of the defendant when there occurs during the trial, either inside or outside the courtroom, an error or legal defect in the proceedings, or conduct that is prejudicial to the defendant and deprives the defendant of a fair trial." I.C.R.

29.1(a). The standard of appellate review of the district court's ruling that an error, defect, or conduct did not deprive the defendant of a fair trial is well established:

> In reviewing a district court's denial of a motion for mistrial in a criminal case, the question is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the "abuse of discretion" standard is a misnomer. The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

State v. Johnson, 163 Idaho 412, 421, 414 P.3d 234, 243 (2018) (internal quotation omitted). See also State v. Field, 144 Idaho 559, 571, 165 P.3d 273, 285 (2007); State v. Passons, 158 Idaho 286, 292-93, 346 P.3d 303, 309-10 (Ct. App. 2015) (calling this standard "well established"); State v. Norton, 151 Idaho 176, 192-93, 254 P.3d 77, 93-94 (Ct. App. 2011) (calling this standard "well established"); State v. Urquhart, 105 Idaho 92, 95, 665 P.2d 1102, 1105 (Ct. App. 1983).

As set forth above, the district court carefully considered the entirety of the trial, the potential prejudice from the inadmissible statement about "back to prison," and the effect of the curative instructions and concluded that the statement did not deprive Evans of a fair trial. Where "improper testimony inadvertently arises and the trial court promptly instructs the jury to disregard the evidence, it must be presumed that the jury obeyed the trial court's direction entirely." State v. Hedger, 115 Idaho 598, 601, 768 P.2d 1331, 1334 (1989) (citing State v. Rolfe, 92 Idaho 467, 444 P.2d 428 (1968); State v. Boothe, 103 Idaho 187, 646 P.2d 429 (Ct. App. 1982)). "Absent compelling circumstances dictating the opposite conclusion, a curative instruction is normally an effective remedy when a jury

is wrongly exposed to inadmissible evidence." State v. Frauenberger, 154 Idaho 294, 302, 297 P.3d 257, 265 (Ct. App. 2013). There is nothing in this record to suggest that the curative instructions were not effective under the facts of this case.

On appeal, Evans argues that the jury speculated that because he went to prison for grand theft, instead of jail or being placed on probation, he must have presented a "greater danger to society." (Appellant's brief, pp. 9-10.[1]) Evans does not articulate why this would have affected their view of his alibi defense.[2] Indeed, any "bad character" evidence was of marginal prejudice in a trial that was exclusively about identification. The "back to prison" statement did not amount to compelling circumstances whereby the Court would conclude that the jury ignored the curative instructions and decided the alibi and identity issue on the basis of evidence they were instructed to not consider.

The district court's analysis was legally proper and supported by the record. Evans has failed to show error.

C. Evans' Invitation To Apply An Erroneous Legal Standard Should Be Rejected

Evans argues that the well-established standard for appellate review of a district court's denial of a mistrial motion "is unclear." (Appellant's brief, pp. 5-6 (citing State v. Perry, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010).) He then argues that he should be relieved of his obligation to demonstrate error and the state should have the burden of proving harmless error. This argument fails for many reasons on logic alone, but primarily it fails for two reasons:

[1] Evans in fact went to prison on a rider. (Trial Tr., p. 624, L. 18 – p. 625, L. 4.)
[2] The district court noted at sentencing that identification of the shooter was the only disputed issue, and the evidence Evans was the shooter was "overwhelming." (Trial Tr., p. 620, L. 9 – p. 624, L. 5.)

First, there is no mention of mistrial in the Perry opinion. Simply stated, the case does not address appellate review of mistrial rulings at all. The claim that the opinion renders a standard irrelevant to resolution of the case "unclear" is dubious, at best.

Second, Evans is essentially asking this Court to determine that the state has the burden of proving correct the district court's ruling that the "back to prison" statement did not deprive him of a fair trial. Such a standard runs directly contrary to the well-established rule that decisions of the lower court are entitled to a presumption of regularity and validity. State v. Wolfe, 158 Idaho 55, 61, 343 P.3d 497, 503 (2015) (citing Burge v. State, 90 Idaho 473, 478, 413 P.2d 451, 454 (1966); State v. Mason, 102 Idaho 866, 869, 643 P.2d 78, 81 (1982)); State v. Mundell, 66 Idaho 297, 304, 316, 158 P.2d 818, 820, 825 (1945); Parke v. Raley, 506 U.S. 20, 29 (1992)). This presumption is why an appellant has the burden of proving error. See, e.g., Garcia v. Pinkham, 144 Idaho 898, 899, 174 P.3d 868, 869 (2007). Because the district court has already determined that Evans' trial was not rendered unfair by the statement, the state and this Court may rely on the correctness of that determination unless and until Evans demonstrates it to be erroneous. As set forth above, he failed to do so. His argument that he should carry no such burden is meritless.

II.
Evans Has Failed To Show An Abuse Of Sentencing Discretion

In imposing sentence, the district court reviewed the facts of the case which, very fortuitously, were not a first-degree murder (Trial Tr., p. 620, L. 9 – p. 628, L. 21); applied the relevant legal standards (Trial Tr., p. 628, L. 22 – p. 633, L. 9); and concluded that the maximum sentence should not be imposed because some period of parole would best serve the goals of sentencing (Trial Tr., p. 633, Ls. 10-24). The district court then imposed a

sentence of 35 years with 30 years determinate. (Trial Tr., p. 633, L. 25 – p. 634, L. 8.) The district court's order denying Evans's Rule 35 motion follows the same pattern. (Supp. R., pp. 14-21.)

On appeal Evans argues that when imposing sentence the district court "failed to give proper weight and consideration" to his family support and ability to hold a job, which he contends were mitigating factors. (Appellant's brief, pp. 11-12.) He contends that the district court "failed to give proper weight and consideration" to his "Certificate of Appreciation" for having no disciplinary reports and support from extended family in denying his motion for leniency. (Appellant's brief, pp. 13-14.) Evans put three bullets into his ex-wife and the mother of one of his sons in a premediated attempt to murder her. His family support, ability to hold a job, and "Certificate of Appreciation" really don't mitigate that.

CONCLUSION

The state respectfully requests this Court to affirm the judgment and order denying the Rule 35 motion.

DATED this 8th day of January, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd