

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46177
 Plaintiff-Respondent,)
) Twin Falls County Case No.
 v.) CR42-2017-11526
)
 SCOTT DAVID STEEL,)
)
 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**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Scott Davis Steel appeals from his conviction and sentence for aggravated assault.

Statement Of The Facts And Course Of The Proceedings

The state charged Steel with aggravated assault with a deadly weapon enhancement. (R., pp. 27-29.) The case proceeded to trial. (R., pp. 68-72, 96-97.)

The evidence at trial showed that the bartender for Mia's Place excluded Steel from the bar. (Trial Tr., vol. I, p. 168, L. 12 – p. 171, L. 17.) A few days later, Steel went into Mia's Place, was again told by the bartender that he could not be there, and reacted by stabbing the bar counter with a knife, asking what the bartender was going to do about his presence, and stating, "Well, you'll take my money and buy beers for the bar." (Trial Tr., vol. I, p. 115, Ls. 10-20; p. 116, L. 13 – p. 117, L. 18; p. 123, L. 25 – p. 126, L. 13; p. 131, L. 23 – p. 137, L. 1; p. 163, L. 13 – p. 165, L. 15; p. 171, L. 18 – p. 179, L. 8; p. 183, L. 24 – p. 188, L. 6; p. 193, L. 18 – p. 198, L. 4.)

Prior to trial the defense objected to admission of a video of a post-arrest interview of Steel, arguing that from the video the jury could infer that Steel was in handcuffs, which was unfairly prejudicial. (Trial Tr., vol. I, p. 95, L. 16 – p. 97, L. 6.) The district court took up the question of admissibility of the video later, during the trial. (Trial Tr., vol. I, p. 97, Ls. 7-11; p. 139, L. 4 – p. 147, L. 12.) After hearing argument it overruled the objection and admitted the redacted video. (Trial Tr., p. 147, L. 13 – p. 148, L. 19; p. 210, Ls. 12-15; State's Exhibit 103.)

The jury convicted Steel of both aggravated assault and the deadly weapon enhancement. (R., p. 114.) The district court imposed a sentence of 20 years with 10 years determinate. (R., pp. 119-21.) Steel filed a timely notice of appeal. (R., pp. 124-27.)

ISSUES

Steel states the issues on appeal as:

- I. Did the district court abuse its discretion by admitting an overly prejudicial video of Mr. Steel in the back of a police car?
- II. Did the district court abuse its discretion by sentencing Mr. Steel to twenty years, with ten years fixed, for aggravated assault with a knife?
- III. Did the district court abuse its discretion by denying Mr. Steel's Rule 35 motion for a reduction in his fixed time?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Has Steel failed to show the district court abused its discretion by admitting a redacted recording of Steel's post-arrest interview?
2. Has Steel failed to show the district court abused its discretion either by sentencing him to 20 years with 10 years determinate upon Steel's conviction for aggravated assault with a deadly weapon enhancement or by denying his Rule 35 motion?

ARGUMENT

I.

Steel Has Failed To Show The District Court Abused Its Discretion By Admitting A Redacted Recording Of Steel's Post-Arrest Interview

A. Introduction

The district court overruled Steel's objection to admission of a video recording of his post-arrest interview, stating that, even though "it's possible" to draw an inference that he is in handcuffs from "the way that Mr. Steel is positioned in the patrol car," because the handcuffs are not actually visible the level of prejudice did not justify excluding the video. (Trial Tr., vol. I, p. 147, L. 24 – p. 148, L. 19.) Steel contends the district court abused its discretion because the "video of him in the back of the police car with his hands behind his back was prejudicial"; the "video is far more prejudicial than the jury hearing testimony on the defendant's arrest"; and, because a nearby officer also created video not showing Steel, the probative value of the video was limited to "the jury's ability to see Mr. Steel's face and body language." (Appellant's brief, pp. 7-8.) Thus, Steel concludes, the "video's probative value did not outweigh the danger of unfair prejudice." (Appellant's brief, p. 9.) Steel's argument fails because he never claims that the potential for unfair prejudice substantially outweighs the video's probative value, and thus has failed to argue that the evidence is excludable under the applicable legal standard. If the correct legal standard is applied despite Steel's failure to request its application, the record supports the district court's exercise of discretion.

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, 450, 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 abused its discretion, this Court considers whether the trial court 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.” Id. (quoting Perry v. Magic Valley Reg'l Med. Ctr., 134 Idaho 46, 51, 995 P.2d 816, 821 (2000)).

C. Steel Has Not Shown An Abuse Of Discretion By The District Court Because He Has Not Requested Application Of The Correct Legal Standard

Although Steel correctly identifies the standard for exclusion of unfairly prejudicial evidence, he at no point claims that the video is excludable under that standard. (Appellant’s brief, pp. 7-9.) “When issues on appeal are not supported by propositions of law, authority or argument, they will not be considered.” State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Because Steel has not requested this Court to review whether the probative value of the video is substantially outweighed by the danger of unfair prejudice, he has failed to support his claim or error with relevant argument.

Evidence may be excluded if, in the district court’s discretion, “its probative value is substantially outweighed by a danger of ... unfair prejudice.” I.R.E. 403. Unfair prejudice is the tendency “to suggest a decision on an improper basis.” State v. Moore, 131 Idaho 814, 819, 965 P.2d 174, 179 (1998). “Under the rule, the evidence is only excluded if the probative value is substantially outweighed by the danger of unfair prejudice. 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).

Steel does not claim that the video's probative value is *substantially outweighed by a danger of unfair prejudice*. Rather, Steel claims the video "was prejudicial"; that it was "far more prejudicial than the jury hearing testimony on the defendant's arrest"; that "the jury's ability to see Mr. Steel's face and body language did not add enough probative value to outweigh the video's prejudicial effect"; that "[o]bservations of Mr. Steel's facial expressions and demeanor were unnecessary in light of the video's prejudicial impact"; that "Mr. Steel's demeanor had very little probative value"; and that "[a]ny probative value" in the video "did not outweigh the danger of unfair prejudice." (Appellant's brief, pp. 7-8.) Steel concludes: "The video's probative value did not outweigh the danger of unfair prejudice to Mr. Steel, and the district court should have excluded the video in light of the alternatives." (Appellant's brief, p. 9.) In short, Steel argues only that the video's probative value did not outweigh the danger of unfair prejudice, and at no point argues that the danger of unfair prejudice substantially outweighs the video's probative value. Even accepting Steel's argument at face value would not show an abuse of discretion by the district court. Steel has failed to argue that the video was inadmissible under the applicable I.R.E. 403 standard, and therefore has failed to show the district court abused its discretion in overruling the I.R.E. 403 objection raised at trial.

Even if Steel had made the claim that the video's probative value was substantially outweighed by a danger of unfair prejudice, the record would not support such a claim.

First, evidence that officers placed Steel in handcuffs at the time of his arrest was not unfairly prejudicial. Rule 403 "does not require the exclusion of all prejudicial evidence, but only that which is *unfairly* prejudicial such that it tends to suggest a decision on an improper basis." State v. Russo, 157 Idaho 299, 309, 336 P.3d 232, 242 (2014)

(internal quotations omitted, emphasis original). An officer's use of handcuffs *at the time of arrest* is not unfairly prejudicial because it does not tend to suggest a decision on an improper basis. Use of handcuffs during an arrest is merely a routine safety precaution, and not in any way indicative of guilt.

Steel, unable to cite cases holding that evidence of handcuffing *at the time of arrest* is unfairly prejudicial, cites to cases holding that restraining a defendant *during trial* may violate due process. (Appellant's brief, p. 7.) For example, in Illinois v. Allen, 397 U.S. 337, 344 (1970), the Supreme Court of the United States stated that trying a disruptive and unruly defendant "while he sits bound and gagged" would comply with the Sixth Amendment, but only as a "last resort." This is so because: "Not only is it possible that the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold." Id. It does not follow that a jury that sees the defendant handcuffed following his arrest would feel different about the defendant, or that such would violate the dignity and the decorum of a trial. Although restraints are common for arrests and incarceration, they are allowed in the courtroom only where "overriding concerns for safety or judicial decorum predominate." State v. Crawford, 99 Idaho 87, 96, 577 P.2d 1135, 1144 (1978). There are substantial differences between a routine safety precaution associated with arrest and an extraordinary safety precaution associated with a trial. Placing handcuffs on Steel at the time of his arrest did not send the message that he was any more dangerous than any other arrestee, like handcuffing at trial would have sent the message that he was more dangerous than most defendants. Evidence that officers placed Steel in handcuffs at the time of his

arrest was not unfairly prejudicial because it did not tend to suggest a decision on an improper basis.

Second, even if evidence that Steel was handcuffed at the time of his arrest were unfairly prejudicial, the video is not such evidence. The video shows Steel in the back of a police car after his arrest, but it does not show that his hands are handcuffed. (State's Exhibit 103.) Indeed, it does not even show that his hands are behind his back. (Id.) It rarely shows anything below his shoulders, is rather dark and grainy, and does not show where his arms were. (Id.) Although a person already knowing Steel was handcuffed might identify parts of the video consistent with that knowledge, a person without that knowledge is unlikely to draw the inference that Steel is handcuffed from the video alone. In short, there is no danger of unfair prejudice because the inference of handcuffing is both remote and unlikely.

Third, even if there is a possible inference that he is in handcuffs from his body position, such a possible inference is substantially less prejudicial than showing the actual handcuffs, as found by the district court. (Trial Tr., vol. I, p. 148, Ls. 4-12.) Moreover, Steel's statements, demeanor, and tone of voice are of a high probative nature. (See, e.g., State's Exhibit 103 (video in question); Trial Tr., vol. II, p. 288, L. 11 – p. 291, L. 8 (prosecutor's argument based on video).) Even accepting that evidence of handcuffing at the time of arrest is unfairly prejudicial, the record thus shows that the danger of unfair prejudice was low because (1) the danger that the jury would conclude Steel was in handcuffs *at all* was minimal; (2) even if the jury did infer he was in handcuffs the inference from the video is no more prejudicial than the inference he was in handcuffs from the fact of arrest; and (3) a mere inference that Steel was in handcuffs is less unfairly prejudicial

than seeing him in handcuffs. In contrast, the probative value of the video was high because Steel's statements were highly valuable to the prosecution, and assessing that value was greatly enhanced by being able to see Steel (including his expressions and his demonstrativeness) as he makes his statements.

Steel argues that the probative value of the video is undercut by the existence of a second video recorded by another officer in the vicinity of the interview. (Appellant's brief, p. 8.) However, the prosecution below contended that the content of the videos was different in two ways: in the other officer's video Steel cannot be seen and "[s]ome of the responses are not audible." (Trial Tr., vol. I, p. 139, L. 20 – p. 140, L. 4.) Defense counsel acknowledged that, although he did not think that there were statements in the video in question that could not be heard on the other video, "[t]here may be." (Trial Tr., vol. I, p. 147, Ls. 3-12.) The alternative video is not in the record. The existence of a video that does not show Steel and that does not audibly capture everything he said does not undercut the district court's exercise of discretion.

Evidence that may suggest that Steel was in handcuffs shortly after his arrest is not unfairly prejudicial or is minimally unfairly prejudicial. The video of Steel's post-arrest statements is of high probative value, both for the audio and the video components. Steel has not claimed that the danger of unfair prejudice substantially outweighs the probative value, but if he had the record does not support such a claim.

II.

Steel Has Failed To Show The District Court Abused Its Sentencing Discretion

A. Introduction

The district court sentenced Steel to 20 years with 10 years determinate upon his conviction for aggravated assault and use of a deadly weapon. (R., pp. 119-21.) The court also denied a Rule 35 motion for leniency. (Aug., pp. 9-11.) Steel argues the district court abused its sentencing discretion because he claimed that he had accepted responsibility and that he felt remorse and regret, and because this is the first crime he committed after his most recent parole. (Appellant's brief, pp. 11-12.) Steel argues that the district court abused its discretion in denying his Rule 35 motion because some family members wrote nice letters for him. (Appellant's brief, pp. 13-15.) The record supports the district court's exercise of sentencing discretion and does not support Steel's claims of an abuse of discretion.

B. Standard Of Review

"An appellate review of a sentence is based on an abuse of discretion standard." State v. Bonilla, 161 Idaho 902, 905, 392 P.3d 1243, 1246 (Ct. App. 2017). "To show an abuse of discretion, the defendant must show that in light of the governing criteria, the sentence was excessive, considering any view of the facts." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016). The objectives of sentencing are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong-doing." State v. Matthews, No. 45295, 2019 WL 361987, at *3 (Idaho Jan. 30, 2019) (internal quotation omitted). "A sentence of confinement is reasonable if it appears at the time of sentencing that

confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case.” State v. Oar, 161 Idaho 550, 556, 388 P.3d 65, 71 (Ct. App. 2016).

C. The District Court Did Not Abuse Its Sentencing Discretion

In imposing sentence, the district court considered the goals of sentencing and the record before it. (Sentencing Tr., p. 28, L. 12 – p. 29, L. 3.) The district court concluded the “most significant thing about [Steel’s] prior record” was his “conviction for first degree murder.” (Sentencing Tr., p. 29, Ls., 3-7.¹) Steel was sentenced to life, but was given parole, from which he had a history of absconding. (Sentencing Tr., p. 29, Ls. 7-16.²) The district court found it significant that Steel committed both the prior murder and the current aggravated assault with a knife, and concluded that Steel’s efforts to pass his current crime off as merely a joke gone wrong “clearly depreciates the seriousness of this offense.” (Sentencing Tr., p. 29, L. 17 – p. 30, L. 10.) The district court also found it significant that this crime was committed about five months after Steel was released on the murder conviction. (Sentencing Tr., p. 30, Ls. 11-20.³) Based on these factors, the court rejected alternatives to execution of the sentence and imposed a sentence of 20 years with 10 years determinate. (Sentencing Tr., p. 31, L. 14 – p. 32, L. 8.)

¹ The facts behind Steel’s federal convictions for murder, theft of a motor vehicle and interstate transportation of a stolen motor vehicle are, in a nutshell, that in 1983 Steel was hitchhiking and, when a motorist picked him up, Steel stabbed him to death and took his car and property. (Confidential Exhibits, pp. 25-26.)

² Steel was paroled on the 1984 murder conviction in 2000, absconded to Mexico where he was arrested for parole violations in 2009, granted parole again in 2010, and granted early discharge on June 21, 2017. (Confidential Exhibits, pp. 11-12.)

³ See Note 2, *supra*.

On appeal, Steel claims the district court abused its discretion because Steel expressed acceptance of responsibility, remorse and regret. (Appellant’s brief, p. 11.) Calling Steel’s statements an expression of responsibility, remorse and regret is generous to a fault. Steel claimed the entire thing was “rough horse play,” but the bar patrons and bartender “collaborated in my conviction” because of the “hatred that was pointed at me.” (Confidential Exhibits, p. 10; see also Sentencing Tr., p. 22, Ls. 22-25; p. 24, L. 18 – p. 27, L. 2.) An expression that the bar patrons were responsible, and that he has remorse and regret that they railroaded him, is not mitigating. The record shows that the district court simply did not believe Steel’s claims about the events of that night, and that they depreciated the seriousness of the crime. (Sentencing Tr., p. 29, L. 17 – p. 30, L. 10 (rejecting Steel’s claim he intended a joke).) Steel has failed to show that he in fact accepted responsibility and claimed remorse and regret, much less that the district court abused its sentencing discretion because of his statements.

Steel also claims that it is significant that he was successful on his 2010 parole. (Appellant’s brief, pp. 11-12.) That Steel went almost eight years outside of prison without committing any knife-related felonies is not as mitigating as Steel may think. As the district court noted, this crime of threatening a woman with a knife was committed within a few short months after Steel finished serving his sentence for stabbing a man to death. (Sentencing Tr., p. 30, Ls. 11-20.) Steel has shown no abuse of discretion.

The district court also denied Steel’s Rule 35 motion for reconsideration and leniency. (Aug., pp. 9-11.) That motion was based on letters from family members in support. (Aug., pp. 1-8.) The district court concluded that although the individual letters were new, “the Court at the time of sentencing was aware that the defendant had family

support.” (Aug., p. 11.) Thus, the “letters only confirm” what was in the PSI. (Id.) Ultimately, family support did not show the sentence was excessive “[c]onsidering the serious nature of the underlying offense as well as the good order and protection of society.” (Id.)

Steel argues that “[f]amily support and letters of good character stand in favor of mitigation.” (Appellant’s brief, p. 13.) Steel does not address, however, the district court’s analysis that the evidence was at least somewhat cumulative in nature and did not offset the serious nature of the crime or the need to protect society. Because Steel does not address the district court’s analysis, he has failed to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm Steel’s judgment and sentence.

DATED this 15th day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of March, 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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