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State v. Charboneau Appellant's Brief Dckt. 46552

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

STATE OF IDAHO,	)	
	)	**NO. 46552-2018**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR-FE-2016-1966**
v.	)	
	)	
JAIME DEAN CHARBONEAU,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE MICHAEL REARDON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jaime Dean Charboneau appeals from his judgment of conviction for burglary and aggravated assault with an enhancement for the use of a deadly weapon. Mr. Charboneau was convicted following a jury trial and the district court imposed sentences of ten years fixed for aggravated assault and fifteen years fixed for burglary, ordered to run consecutive to each other and to a previous sentence Mr. Charboneau was serving in an unrelated case. Mr. Charboneau appeals, and he asserts that the district court erred by denying his motion for a mistrial and by excluding two of his proposed witnesses.

Statement of the Facts and Course of Proceedings

Helen Collinson owned a wine bar in Star, Idaho, and testified that she met Mr. Charboneau at the bar in the fall of 2015. (Tr., p.764, L.24 – p.765, L.2.) She had been in a relationship with Fred Iverson, but testified that they were "drifting apart" and she was "definitely" attracted to Mr. Charboneau when she met him. (Tr., p.767, L.16 – p.768, L.14.) Ms. Collinson ended her relationship with Mr. Iverson at the end of November or early December, 2015, and began dating Mr. Charboneau in December. (Tr., p.769, L.7 – p.771, L.5.) She testified that she broke up with Mr. Charboneau on January 30, 2016. (Tr., p.771, Ls.6-8.) Ms. Collinson testified that the reason for the break up was that Mr. Charboneau had become possessively jealous about how she was interacting with customers at the wine bar. (Tr., p.792, Ls.4-6.)

Two weeks after the break up, deputies from the Ada County Sheriff's office responded to a call from Ms. Collinson, who reported that she returned home and found Mr. Charboneau in

her residence where he threatened her with a loaded crossbow. (Presentence Investigation Report (*hereinafter*, PSI), p.3.)

Mr. Charboneau tells a very different story of the relationship. He reported that he was the victim of a kidnapping by Ms. Collinson and had been held at Ms. Collinson's house for two days. (PSI, p.3.) Further, he had previously reported an incident alleged to have taken place on February 3, 2016. He had informed the police that while he was dating Ms. Collinson, he told her that he would take her trailer to his cousin's shop and get it repaired. (Tr., p.457, Ls.3-7.) He stated that he was going to return the trailer but on the way to return it, he got a flat tire and told her he was not going to be able to return it until the tire was fixed. (Tr., p.457, Ls.13-19.) Mr. Charboneau stated that he had to stop on the road and told Ms. Collinson that he would have to return the trailer the following day so he could get the tire repaired; Mr. Charboneau could not remember the exact place where he stopped. (Tr., p.457, L.20 – p.460, L.7.) Mr. Charboneau stated that he passed Ms. Collinson and an unidentified male in her pickup, and he pulled over to speak to Helen and she hit him with a baseball bat or stick. (Tr., p.461, Ls.9-12.) Mr. Charboneau was later found tied to his pickup truck out by Murphy, Idaho, and he reported that he had been kidnapped by Ms. Collinson. (Tr., p.395, Ls.11-25.)

Authorities investigated the alleged kidnapping incident and Ms. Collinson denied any involvement; no charges were ever filed against Ms. Collinson. However, Mr. Charboneau was charged with burglary and aggravated assault with an enhancement for the use of a deadly weapon in the alleged burglary incident. (R., p.81.) He proceed to trial *pro se*.

During Mr. Charboneau's trial, Thomas Bergstrom, Mr. Charboneau's friend, testified. (Tr., p.489, Ls.8-11.) During his testimony, he was asked about a phone call he received from Mr. Charboneau on February 2, 2016, and when asked about the nature of the call, stated,

"[w]ell, [Mr. Charboneau] had some concerns about being exposed to any criminal activity and the revocation of his bond, the possibility that it could be revoked if he was involved in criminal activity or something like that." (Tr., p.500, Ls.17-21.) Mr. Charboneau objected to this statement and the court sustained the objection and told the jury to disregard the comment. (Tr., p.500, Ls.22-25.) The court took a recess and then admonished the witness:

> Mr. Bergstrom, you made a reference to the defendant's release on bond. You may not refer to anything that had to do with the 1984 case including any concerns that he may have had about his release on bond.
>
> There – I understand the concern, Mr. Charboneau. There was no reference to what any bond might have referred to. I do not think that there has been sufficient prejudice as to interrupt the trial beyond what I'm doing. The jury has been admonished not to consider that statement. My sense is that any prejudice that was created has been remedied.

(Tr., p.501, Ls.11-23.) Mr. Charboneau then attempted to make a motion for a mistrial, stating, "I'd like to put on the record that once the bell's been rung-" when the district court interrupted and said that Mr. Charboneau was welcome to take the issue up on appeal. (Tr., p.503, Ls.1-6.) He also later filed a motion for a mistrial on this basis, which the district court denied. (R., p.622, Tr., p1337, Ls.4-21.)

Further, Mr. Charboneau wished to call Dave Orem to testify that Mr. Charboneau did not behave jealously toward Ms. Collinson, but the district court determined that his proposed testimony would not be relevant. (Tr., p.1559, Ls.6-15.) He also wished to call Doug Evans, Ms. Collinson's ex-husband, to testify as to her character during their marriage, which the district court held was inadmissible pursuant to I.R.E. 404(b). (Tr., p.1551, Ls.19-24.)

Mr. Charboneau was found guilty and the district court imposed sentences of ten years fixed for burglary and fifteen years fixed for burglary, ordered to run consecutive to each other and to a previous sentence Mr. Charboneau was serving in an unrelated case. (R., p.808.)

Mr. Charboneau appealed. (R., pp.802, 814.) He asserts that the district court erred by denying his motion for a mistrial and by excluding his witnesses.

ISSUES

I. Did the district court err by denying Mr. Charboneau's motion for a mistrial?

II. Did the district court err by excluding two of Mr. Charboneau's witnesses?

ARGUMENT

I.

The District Court Erred In Denying Mr. Charboneau's Motion For A Mistrial

A. Introduction

Prior to trial, the district court ruled that any evidence relating to Mr. Charboneau's prior conviction in an unrelated case was inadmissible. While the jury did not hear evidence of what Mr. Charboneau's conviction was for, it did hear evidence that he was out on bond at the time of alleged offense in this case, which demonstrates that he had been charged with a crime. Mr. Charboneau made a motion for a mistrial following this improper testimony, which the district court denied. He asserts that the district court erred by denying the motion.

B. The District Court Erred In Denying Mr. Charboneau's Motion For A Mistrial

In criminal cases, motions for mistrial are governed by Idaho Criminal Rule 29.1. "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).

> [T]he question on appeal 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. Urquhart, 105 Idaho 92, 95 (Ct. App. 1983). Any error, defect, irregularity, or variance that does not affect substantial rights is harmless and must be disregarded. "The error will be

deemed harmless if the appellate court is able to declare, beyond a reasonable doubt, that there was no reasonable possibility that the event complained of contributed to the conviction." *State v. Norton*, 151 Idaho 176, 193 (Ct. App. 2011).

In this case, the district court made a pretrial ruling that any mention of Mr. Charboneau's prior conviction was inadmissible pursuant to I.R.E. 404(b). (Tr., p.99, Ls.5-10.) "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith." *State v. Grist*, 147 Idaho 49, 52 (2009). "The prejudicial effect of [character evidence] is that it induces the jury to believe the accused is more likely to have committed the crime on trial because he is a man of criminal character." *Id.* (quoting *State v. Wrenn*, 99 Idaho 506, 510 (1978)). Character evidence, therefore, takes the jury away from their primary consideration of the guilt or innocence of the particular crime on trial. *Id.*

Despite the district court's pretrial ruling, Thomas Bergstrom, Mr. Charboneau's friend, was asked about a phone call he received from Mr. Charboneau on February 2, 2016 and when asked about the nature of the call, stated, "[w]ell, [Mr. Charboneau] had some concerns about being exposed to any criminal activity and the revocation of his bond, the possibility that it could be revoked if he was involved in criminal activity or something like that." (Tr., p.500, Ls.17-21.) Mr. Charboneau objected to this statement and the court sustained the objection and told the jury to disregard the comment. (Tr., p.500, Ls.22-25.) The court took a recess and then admonished the witness:

> Mr. Bergstrom, you made a reference to the defendant's release on bond. You may not refer to anything that had to do with the 1984 case including any concerns that he may have had about his release on bond.
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> There – I understand the concern, Mr. Charboneau. There was no reference to what any bond might have referred to. I do not think that there has been sufficient

> prejudice as to interrupt the trial beyond what I'm doing. The jury has been admonished not to consider that statement. My sense is that any prejudice that was created has been remedied.

(Tr., p.501, Ls.11-23.) The district court was correct to sustain Mr. Charboneau's objection, but Mr. Charboneau asserts the district court also should have granted his motion for a mistrial. While the district court sustained the objection and told the jury to disregard the statement, Idaho courts have noted that certain types of inadmissible evidence can be so damaging that corrective instructions may not always cure the prejudicial effect of the improper evidence. *See, e.g., State v. Keyes*, 150 Idaho 543, 545 (Ct. App. 2011). Mr. Charboneau submits that this is true in his case.

This type of inadmissible "prior acts" evidence – that Mr. Charboneau was out on bond, which he feared might be revoked – is inherently prejudicial because it informs the jury that not only had Mr. Charboneau likely committed a crime in the past for which he was out on bond, but that due to this act, he was a man of criminal character and was therefore more likely to have committed the present crime. *See Wrenn*, 99 Idaho at 510. While the jury did not hear the nature of the prior conviction, the jury was still left to wonder what type of crime for which Mr. Charboneau was out on bond. And, Mr. Charboneau asserts that this inadmissible character evidence is particularly prejudicial where the only witnesses to the alleged crimes were Mr. Charboneau and Ms. Collinson and the jury is going to believe that Mr. Chaboneau is predisposed to criminal activity.

II.

The District Court Erred By Excluding Mr. Charboneau's Witnesses

A. Introduction

During the trial, Mr. Charboneau sought to subpoena several witnesses. For two of these witnesses, Dave Orem and Doug Evans, the district court initially granted the request, but later determined that the witnesses could not provide relevant testimony and thus refused to permit Mr. Charboneau to present their testimony. Mr. Charboneau submits that both witnesses would have provided relevant evidence at trial.

B. The District Court Erred By Excluding Mr. Charboneau's Witnesses

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. I.R.E. 401. Whether a fact is of consequence or material is determined by its relationship to the legal theories presented by the parties. *State v. Johnson*, 148 Idaho 664, 671 (2010). "[B]ias, prejudice, or motive of a witness to lie concerning issues presented in a trial is always material and relevant to effective cross-examination." *State v. Araiza*, 124 Idaho 82, 91, 856 P.2d 872, 881 (1993). This Court reviews questions of relevance de novo. *State v. Raudebaugh*, 124 Idaho 758, 764 (1993); *State v. Aguilar*, 154 Idaho 201, 203 (Ct. App. 2012). Further, the harmless error test articulated in *Chapman v. California*, 386 U.S. 18 (1967), applies in cases of objected-to error. *See State v. Perry*, 150 Idaho 209, 221 (2010). Under the *Chapman* harmless error analysis, where an error occurs at trial and is followed by a contemporaneous objection, a reversal is necessitated unless the State proves beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Id.*

Mr. Charboneau submits that two of his proposed witnesses, Dave Orem and Doug Evans, would have provided relevant evidence and that the district court erred by excluding their testimony.

1. Dave Orem

At trial, Mr. Charboneau sought to subpoena Dave Orem to testify and the subpoena was served. (Tr., p.653, Ls.12-15.) The State later objected, asserting that Mr. Orem would not be able to present relevant evidence. (Tr., p.1556, Ls.18-20.) The State asserted that Mr. Charboneau wanted Mr. Orem to testify to events at Ms. Collinson's wine bar on January 30, 2016, where Mr. Charboneau gave Mr. Orem a ride home, but Mr. Orem couldn't remember if the events Mr. Charboneau described occurred on that date. (Tr., p.1556, Ls.3-17.)

Mr. Charboneau asserted that Mr. Orem could testify that he was in the wine bar on the evening of January 30th and could testify to Mr. Charboneau's and Ms. Collinson's demeanor that night, and that "there was no jealousy. I've seen Helen kiss men, not passionately, but kiss them and didn't give a thought about it. I seen her kiss [Mr. Iverson] before I knew who he was in there. That's all true, Your Honor. That's all true, Your Honor, every bit of it. I can prove it if I'm given the opportunity." (Tr., p.1558, Ls.17-25.) He also stated, "Mr. Orem will be able to testify he's been in here, he's seen me in that place, that establishment many times with Helen and seen our relationship. And he will be able to testify about that night being very rowdy, the rap music being extremely loud." (Tr., p.1558, Ls.10-15.)

The district court then ruled that Mr. Orem's testimony would not be relevant. (Tr., p.1559, Ls.1-15.) The court stated,

> We have Ms. Collinson's explanation of what she did and why she did it. Those were her reasons. If you have evidence that you believe discredits her reasons, I'm happy to hear it. But what you've identified – I don't know how you giving Mr. Orem a ride home or his being able to testify that the music was loud or soft

> or if it was rowdy or there were few people has anything to do with her expression of her reasons why she ended your relationship.

(Tr., p.1559, Ls.6-15.) When Mr. Charboneau stated that Mr. Orem would testify to Ms. Collinson's "character" in the bar that evening, the court ruled that pursuant to I.R.E. 404, Mr. Orem could not testify to her character. (Tr., p.1559, Ls.22-25.) Mr. Charboneau submits that, because Mr. Orem could provide relevant evidence, the district court erred by excluding his testimony.

Ms. Collinson testified that she ended the relationship due to Mr. Charboneau's jealousy, and the State's theory was that Mr. Charboneau acted out of jealously in threatening Ms. Collinson. (Tr., p.792, Ls.4-6.) Here, the district court focused on the argument regarding loud music and giving Mr. Orem a ride home, when Mr. Charboneau also provided argument that Mr. Orem could testify that he knew both Ms. Collinson and Mr. Charboneau, never saw Mr. Charboneau act jealous, even when Ms. Collinson was kissing other men, and that Mr. Charboneau was not acting jealous on the night of January 30th. While the State asserted that Mr. Orem could not sign an affidavit indicating this occurred on January 30th, Mr. Charboneau could certainly have attempted to refresh his recollection. And this evidence is relevant both to impeach Ms. Collinson's evidence that she ended the relationship due to Mr. Charboneau's jealousy and to refute the State's allegation that Mr. Charboneau assaulted Ms. Collinson out of jealousy. The State's entire theory of this case is that Mr. Charboneau assaulted Ms. Collinson due to his jealousy and anger about ending the relationship.

Testimony that Mr. Charboneau did not behave jealously toward Ms. Collinsons during the relationship and the evening that the relationship ended is therefore relevant to disproving his motive. Thus, Mr. Charboneau submits that the district court erred and that his judgment of conviction should be vacated.

2. Doug Evans

Mr. Charboneau also sought, and the State had issued a subpoena for, Doug Evans, who was Ms. Collinsons' ex-husband. (Tr., p.1550, Ls.10-18.) Mr. Charboneau had initially indicated that he had wanted Mr. Evans to testify to an event at Chandler's restaurant where Ms. Collinson had been drinking and approached Mr. Evans and his date, in an effort to show that Ms. Collinson behaved jealously and aggressively – "she was inebriated and hostile" and when Ms. Evans left the restaurant she followed and chased them. (Tr., p.825, L.21 – p.826, L.4; p.1550, Ls.16-25.) Mr. Charboneau later clarified that he wanted Mr. Evans to testify to his personal knowledge of Ms. Collinson and her character when they were married, when he was cut off by the prosecutor and then the district court, which held that any character evidence involving Ms. Collinson was improper character evidence pursuant to I.R.E. 404(b). (Tr., p.1551, Ls.19-24.) The district court erred.

Mr. Charboneau submits that the proper rule of evidence for this issue is not I.R.E. 404(b), but rather, I.R.E. 404(a). Rule 404(b) states that evidence of prior acts or wrongs are not generally admissible to show that the witness acted in accordance with that character, but a more specific rule applies to a victim in a criminal case. Rule 404(a)(2)(B) provides "a defendant may offer evidence of an alleged victim's pertinent trait of character, and if the evidence is admitted, the prosecutor may offer evidence to rebut it." Thus, Mr. Charboneau submits that evidence of a pertinent character trait of Ms. Collinson would be relevant, and the district court erred by holding that Rule 404(b) prevented any evidence of Ms. Collinson's character.

When character evidence is admissible, "it may be proved by testimony about the person's reputation or by testimony in the form of an opinion." I.R.E. 405(a). Thus, Mr. Charboneau acknowledges that evidence of the specific instance of conduct at Chandler's

restaurant would be inadmissible. But, Mr. Evans could testify as to his opinion of a pertinent character trait of Ms. Collinson.

Further, Mr. Charboneau submits that Ms. Collinson's character was at issue due to his defense that he was kidnapped by Ms. Collinson. Thus, her character traits for jealousy and hostility were pertinent. It stands to reason that if Mr. Charboneau originally wanted to introduce specific acts of jealousy and hostility, the character traits he wanted to explore were the same. "[I]n a case involving battery, a defendant can offer reputation or opinion evidence about the victim's character trait for violence to show the victim was the initial aggressor or that the force used against the victim was necessary for self-protection." *Marr v. State*, 163 Idaho 33, 37 (2017) (citing I.R.E. 405(a); *State v. Hernandez*, 133 Idaho 576, 584 (Ct. App. 1999)). The same is true for an assault case or a case where the defendant asserts that he was actually the victim. The bulk of the evidence in this case was not evidence of the incident at Ms. Collinson's house, but evidence that tended to support the State's theory that Ms. Collinson, and not Mr. Charboneau was the victim. As the State acknowledged during closing arguments, "because Mr. Charboneau claimed he was the victim, the State in this case not only had to prove that the State's charges against him were true, but his claims of being a victim were false." (Tr., p.1829, Ls.18-25.) Thus, Ms. Collinson's alleged character traits for jealousy and hostility were pertinent to Mr. Charboneau's defense.

Mr. Evans's reputation or opinion testimony was admissible pursuant to I.R.E. 404(a) and 405(a). Thus, it was error for the district court to exclude this evidence on the basis of I.R.E. 404(b). Mr. Charboneau's conviction should therefore be vacated.

CONCLUSION

Mr. Charboneau requests that this Court vacate his judgment of conviction and remand the case for a new trial.

DATED this 28th day of August, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas