UIdaho Law
Digital Commons @ UIdaho Law

Not Reported
Idaho Supreme Court Records & Briefs

9-19-2019

State v. Castro Appellant's Brief Dckt. 46700

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation
"State v. Castro Appellant's Brief Dckt. 46700" (2019). *Not Reported*. 5797.
https://digitalcommons.law.uidaho.edu/not_reported/5797

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

Electronically Filed
9/19/2019 2:08 PM
Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 46700-2019**
Plaintiff-Respondent,	)	
	)	**CANYON COUNTY NO. CR14-18-14083**
v.	)	
	)	
MANUEL JOSE CASTRO,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

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

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

Nature of the Case 1

Statement of the Facts and Course of Proceedings 1

ISSUE PRESENTED ON APPEAL 4

ARGUMENT 5

The District Court Abused Its Discretion By Determining The Risk Of Undue Prejudice From Admitting Evidence Of Mr. Castro's Gang Affiliations Did Not Substantially Outweigh The Minimal Probative Value It Had Toward His Motive 5

A. Standard Of Review 5

B. When The Risk Of Undue Prejudice And The Potential Probative Value Of The Evidence Of Mr. Castro's Gang Affiliation Are Properly Understood, The Risk Of Undue Prejudice Substantially Outweighed The Probative Value 5

CONCLUSION 9

CERTIFICATE OF SERVICE 9

TABLE OF AUTHORITIES

Cases

Lunneborg v. My Fun Life, 163 Idaho 856 (2018)..5

North Carolina v. Alford, 400 U.S. 25 (1970)..3

State v. Billings, 137 Idaho 827 (Ct. App. 2002)..6

State v. Field, 144 Idaho 559 (2007)..7

State v. Johnson, 148 Idaho 664 (2010)..7

State v. Roy, 127 Idaho 228 (1995)..7

State v. Sheldon, 145 Idaho 225 (2007)..5, 7, 8

State v. Thumm, 153 Idaho 533 (Ct. App. 2012)..8

Statutes

I.C. § 18-6401..6

I.C. § 18-7902..7

Rules

I.C.R. 29..2

I.R.E. 404(b)..2, 5, 8

Additional Authorities

D. Craig Lewis, *Idaho Trial Handbook* § 13.9 (1995)..7

STATEMENT OF THE CASE

Nature of the Case

Manuel Castro appeals, contending the district court abused its discretion when it determined the risk of undue prejudice from allowing the State to present evidence about his gang affiliations did not substantially outweigh the potential probative value it had in regard to his motive in this case. As such, this Court should vacate Mr. Castro's conviction and remand this case for a new trial.

Statement of the Facts and Course of Proceedings

While Mr. Castro was incarcerated at the Canyon County jail, a fight broke out. (*See generally* State's Exhibit 5.)[1] Mr. Castro, who was on the other side of the tier at the time, moved quickly toward the confrontation. (*See* State's Exhibit 5, ~15:08:25.) As he approached the scene, he was confronted by another inmate, Augustin Olvera, who had raised his arms in an aggressive manner. (Tr., p.162, Ls.12-18 (one of the jail deputies explaining the video shows Mr. Olvera posture aggressively before anyone approached him); *see* State's Exhibit 5, ~15:08:40; *compare* Tr., p.179, L.12 - p.180, L.3 (Mr. Olvera testifying he only raised his hands as Mr. Castro had begun approaching him).) Mr. Castro and Mr. Olvera fought, and, after two other inmates joined in support of Mr. Castro, Mr. Olvera yielded. (*See* Tr., p.181, Ls.11-17.)

By that time, the first fight had calmed down, but others had broken out. (*See generally* Exhibits 5, 7, 11.) Mr. Castro moved toward one of those new fights. (*See generally* Exhibits 5, 7, 11.) One of the responding deputies testified that Mr. Castro did not throw any punches at that time, but rather, tried to get in between the other two inmates. (Tr., p.163, L.21 - p.164, L.1.)

---

[1] The prosecutor used the time stamps from the videos when referring to these exhibits. (*See, e.g.,* Tr., p.141, Ls.6-12.) As such, Mr. Castro will do the same here when such references are necessary.

Still, the deputy sprayed them with "OC" spray to subdue them and took Mr. Castro to the ground. (Tr., p.196, L.11 - p.197, L.2.) However, yet another fight broke out near the bathroom as another deputy tried to subdue other combatants, and the first deputy left Mr. Castro to help break up the new fight. (Tr., p.197, L.12 - p.198, L.5.) Mr. Castro got up, went over toward the bathroom, and after a few moments, went into the bathroom. (*See* Exhibit 7, ~15:09:34.) A third responding deputy went into the bathroom, and saw Mr. Castro fighting, grabbed him, moved him out of the bathroom and subdued him. (Tr., p.221, L.17 - p.22, L.13.) Mr. Castro was ultimately indicted for riot with a gang enhancement. (R., pp.11-14.)

The State subsequently disclosed its intent to call an expert witness to explain various aspects of gang culture. (R., pp.59-60.) This was relevant, the State asserted, because it contended the fights were motivated by gang politics – that the combatants were all affiliated with either the Norteño or Sureño gangs and they had fought strictly along those lines. (*See* Tr., p.10, Ls.1-9.) Mr. Castro objected to that proposed testimony and moved for an order *in limine* preventing the State from introducing any information about Mr. Castro's gang affiliations because it was not relevant, and even if it was, the risk of undue prejudice from that evidence substantially outweighed any probative value. (R., pp.87-91.) The State subsequently filed a motion declaring its intent to elicit that sort of evidence under I.R.E. 404(b) as evidence of, *inter alia*, Mr. Castro's motive and intent.[2] (R., pp.107-08.)

---

[2] In response to Mr. Castro's motion for a judgment of acquittal under I.C.R. 29, the State subsequently argued that Mr. Castro's intent was less important because people could "act together" under the riot statute even if they did not share a common purpose. (*See* Tr., p.262, L.10 - p.263, L.17.) The district court concluded the jury could determine the combatants were "acting together, whatever the legislature meant by that" based on the evidence the State presented in that regard. (Tr., p.266, Ls.9-22.) However, it expressed concerns that the statute did not identify an intent element. (Tr., p.231, Ls.2-4.) As such, it ultimately decided to instruct the jurors on the definition of "willfully." (*See* Tr., p.276, L.25 - p.277, L.3.)

The district court ruled the gang affiliation evidence was highly probative to Mr. Castro's motive and intent. (Tr., p.21, Ls.11-13.) It also decided that the risk of undue prejudice did not substantially outweigh that probative value, though "[i]n my mind, that was a close call." (Tr., p.21, Ls.13-16, p.171, Ls.11-18.) The tipping point in that analysis, the district court explained, was the fact that it was going to give a limiting instruction to the jury on that point. (Tr., p.171, Ls.17-18; *see* Tr., p.176, Ls.3-15, p.275, Ls.2-11 (giving the limiting instruction).)

At the trial, the State did not call its expert witness. (*See generally* Tr.) Rather, it presented the testimony of two of the other inmates who had been involved in the fight instead. (*See generally* Tr.) Neither of those inmates claimed intimate gang affiliation, but rather, explained that when they entered the jail, they had been told they had to choose a side. (Tr., p.175, Ls.8-18; p.210, L.10 - p.211, L.8.) Mr. Olvera explained he had chosen the "Northside" (Norteños). (Tr., p.175, L.24 - L.176, L.1.) He believed Mr. Castro and the other two inmates who fought with him were Southsiders (Sureños). (Tr., p.180, Ls.15-16.) He also explained the initial fight had begun because some of the Norteños were using one of their gang's chants while exercising, and some Sureños took exception to that. (Tr., p.178, Ls.3-13.)

The jury ultimately convicted Mr. Castro as charged. (R., p.146.) Mr. Castro then entered made an *Alford* admission[3] to the enhancement. (Tr., p.309, L.22 - p.312, L.16.) The district court subsequently imposed a unified sentence of seven years, all indeterminate, to be served consecutive to his other sentences. (Tr., p.333, L.23 - p.334, L.9.) Mr. Castro filed a notice of appeal timely from the resulting judgment of conviction. (R., pp.187, 189.)

[3] *North Carolina v. Alford*, 400 U.S. 25 (1970).

<u>ISSUE</u>

Whether the district court abused its discretion by determining the risk of undue prejudice from admitting evidence of Mr. Castro's gang affiliations did not substantially outweigh the minimal probative value it had toward his motive.

ARGUMENT

The District Court Abused Its Discretion By Determining The Risk Of Undue Prejudice From Admitting Evidence Of Mr. Castro's Gang Affiliations Did Not Substantially Outweigh The Minimal Probative Value It Had Toward His Motive

A. Standard Of Review

When reviewing the decision to allow propensity evidence under I.R.E. 404(b), the appellate courts conduct a two-tiered analysis. *State v. Sheldon*, 145 Idaho 225, 229 (2008). It freely reviews the determination of whether the evidence is relevant to a non-propensity purpose, and it reviews the determination of whether the risk of undue prejudice substantially outweighs the probative value for an abuse of discretion. *Id.* The district court abuses its discretion when: (1) it fails to recognize the issue as one of discretion; (2) it acts beyond the outer bounds of its discretion; (3) it acts inconsistently with the applicable legal standards, or (4) it reaches its decision without exercising reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018).

B. When The Risk Of Undue Prejudice And The Potential Probative Value Of The Evidence Of Mr. Castro's Gang Affiliation Are Properly Understood, The Risk Of Undue Prejudice Substantially Outweighed The Probative Value

As the district court pointed out, this was a close case in terms of weighing the risk of undue prejudice and the probative value of the gang affiliation evidence. (Tr., p.171, Ls.11-18.) The thing that tipped the scales toward admission in this case, in the district court's mind, was the fact that it was going to give a limiting instruction regarding the use of that evidence. (*See* Tr., p.171, Ls.17-18) That analysis reveals the district court did not reach its decision in an exercise of reason in two respects. First, the weight it put on the probative value of Mr. Castro's motive was not supported by the record or the applicable law, and second, the reduced weight it gave to the risk of undue prejudice did not account for the fact that this is one of the situations where a limiting instruction may not actually cure the risk of undue prejudice.

First, the district court misunderstood just how probative this evidence was, given the elements of riot. As the district court noted, the riot statute does not contain an intent element. (Tr., p.231, Ls.2-4.) Rather, it only requires two or people acting together and causing injury, damage, or disturbance. I.C. § 18-6401. While there is no case law exploring the riot statute specifically, in this respect, it is similar to the battery statute. The battery statute only requires the person to intend their conduct, not that they need to have any sort of specific criminal intent. *See, e.g., State v. Billings*, 137 Idaho 827, 830 (Ct. App. 2002). Basically, the battery statute does not really care why one person strikes another, just that they intended to strike that other person. *See id*. The same appears true of the riot statute. *See* I.C. § 18-6401. The instruction the district court ultimately gave on intent actually reflects this point: "One can act willfully without intending to violate the law, to injury another, or to acquire any advantage." (Tr., p.277, Ls.1-3.)

The district court's acceptance of the State's subsequent argument on Mr. Castro's motion for directed verdict also demonstrates this is the proper understanding of the riot statute. (Tr., p.263, Ls.15-17 (asserting there was no need for an agreement of purpose between the participants in a riot).) Rather, the State asserted, it was sufficient that multiple people were simply punching at the same person. (*See* Tr., p.262, L.10 - p.263, L.14.) The district court agreed with the State, though it noted that the relevant statutory language was potentially ambiguous in that regard. (*See* Tr., p.266, Ls.9-22.) If there was no need for an agreement under this statute, Mr. Castro's motive was not particularly relevant to the question of whether he engaged in a riot.

Rather, specific intent only comes into play in this context, as in the battery context, if there is some sort of enhancement is alleged. For example, the person's intent becomes relevant

to a battery if it is alleged to have been based on the victim's race. *See* I.C. § 18-7902 (actually defining that as a separate crime of malicious harassment). However, in this case, State elected, and the district court used, a bifurcated proceeding to present the gang enhancement. (*See generally* R., pp.11-14,142.) The reason the bifurcated trial procedure developed is precisely because these sort of enhancements carry a significant possibility of prejudicing the jury's evaluation of the base charge. *See, e.g., State v. Roy*, 127 Idaho 228, 230 (1995) (discussing the bifurcation procedure in relation to enhancements based on prior convictions). Thus, while Mr. Castro's gang affiliation might have been relevant to his case in the general sense, it was only relevant to the second part of the trial, not the first part. Since Mr. Castro's motive was not particularly probative to the first part of the trial, the district court abused its discretion when it allowed that evidence to be presented in the first part of the trial based on its determination that the risk of undue prejudice did not outweigh that minimal probative value.

Second, the district court misunderstood the risk of undue prejudice because its reliance on the limiting instruction was misplaced. As the Idaho Supreme Court has recognized, some propensity evidence is so pervasive that a limiting instruction will not be able to prevent propensity analysis from still tainting the verdict, even if subconsciously. *Compare, e.g., State v. Johnson*, 148 Idaho 664 (2010) (quoting *State v. Field*, 144 Idaho 559, 569-70 (2007) (quoting D. Craig Lewis, *Idaho Trial Handbook* § 13.9 (1995))) (explaining that, because the risk of prejudice from evidence of prior sexual misconduct with children was so high, there was still a reasonable possibility the jury's verdict was tainted by "'unstated'" propensity considerations despite the fact that the district court gave a limiting instruction which "surely helped mitigate" against that prejudice); *State v. Sheldon*, 145 Idaho 225, 229 n.3 (2007) (explaining that the risk of undue prejudice from evidence that the defendant had dealt methamphetamine still

substantially outweighed the probative value of that evidence even though the district court had given a limiting instruction in regard to that evidence).[4]

Given the negative connotations society associates with gangs, this risk of undue prejudice from this sort of evidence – that the jury will convict because of his gang affiliation rather than on a determination of whether he the State has proved him guilty of this particular offense – is so pervasive that, like in *Johnson*, the limiting instruction, helpful though it may have been, did not sufficiently ameliorate the risk of undue prejudice. This is particularly true because the way in which the State was using this evidence – that the jury should conclude Mr. Castro was "rioting" because he was in a gang – still hints at a propensity reasoning. *Compare State v. Thumm*, 153 Idaho 533, 540 (Ct. App. 2012) (in which evidence that one of the witnesses was in a gang with the defendant was only admitted to show that the witness had a bias in favor of the defendant, rather than to show the defendant had committed the charged offense).

As such, the district court's analysis under the second part of the analysis under I.R.E. 404(b) was not an exercise of reason because it misunderstood not only the extent of both the probative nature and the prejudicial impact of this evidence. Essentially, based on its mistaken understanding of the evidence, it erroneously added weight to the probative side of the scale and took weight away from the prejudicial side for reasons not supported by the record and applicable legal standards. And even with the weights mistakenly skewed in that manner, it still found this was a close case. Therefore, it abused its discretion by admitting the evidence of Mr. Castro's gang affiliation in the State's case in chief in the first part of the bifurcated trial.

---

[4] The specific problem with the limiting instruction in *Sheldon* was that it was generic and did not specifically refer to the particular evidence of that case. *Sheldon*, 145 Idaho at 229 n.3. The limiting instructions the district court gave in this case was more specific than the instruction in *Sheldon*. (*See* Tr., p.176, Ls.3-15, p.275, Ls.2-11.) However, *Sheldon* is still useful because it demonstrates that this concern – that limiting instructions may not be sufficient to corral the risk of undue prejudice – exists beyond the context of sexual deviancy.

CONCLUSION

Mr. Castro respectfully requests this Court vacate his judgment of conviction, reverse the order admitting the evidence of his gang affiliation in the first part of the bifurcated trial, and remand this case for a new trial.

DATED this 19th day of September, 2019.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 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

BRD/eas