

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 46700-2019  
 Plaintiff-Respondent, )  
 ) Canyon County Case No.  
 v. ) CR14-2018-14083  
 )  
 MANUEL JOSE CASTRO, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

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**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**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  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Manuel Jose Castro appeals from the judgment of the district court entered upon the jury verdict finding him guilty of felony riot. On appeal, Castro argues the district court abused its discretion when it determined the risk of undue prejudice from admitting evidence of his gang affiliation did not substantially outweigh its probative value.

### Statement Of The Facts And Course Of The Proceedings

On June 6, 2018, a riot broke out at the Canyon County Jail between two rival gangs, the “Northside” (Norteños) and the “Southside” (Sureños). (Tr., p.176, L.22 – p.179, L.10.) The riot started when members of the Sureños overheard members of the Norteños reciting a gang chant while exercising and took exception to it. (Tr., p.176, L.22 – p.178, L.24; see State’s Ex. 11, 15:07:55-15:08:45.) At the time, Castro was an inmate at the jail and was affiliated with the Sureños. (Tr., p.133, L.2 – p.135, L.3; p.180, Ls.10-16.) During the riot, Castro repeatedly punched and kicked Agustin Olvera, an inmate associated with the Norteños. (Tr., p.179, L.4 – p.180, L.9; State’s Ex. 5, 15:08:39-15:09:06; State’s Ex. 11, 15:08:35-15:08:49.) After fighting Olvera, Castro stepped in between two other inmates who were fighting nearby. (State’s Ex. 7, 15:09:15-15:09:33.) He put his hands up in a fighting stance, but he did not throw any punches before a deputy subdued him. (Tr., p.195, L.3 – p.196, L.21; State’s Ex. 7, 15:09:20-15:09:50.) The deputy eventually left Castro to assist other deputies. (State’s Ex. 7, 15:09:50-15:09:57.) Castro then entered a shower area, and engaged in a third bout of fighting by throwing several more punches. (State’s Ex. 5, 15:09:50-15:10:20; State’s Ex. 7, 15:09:48-15:10:12.)

A grand jury indicted Castro on charges of felony riot, Idaho Code §§ 18-6401, 18-6402, and a felony gang enhancement, I.C. § 18-8503. (R., pp.11-14.) Castro pled not guilty, and the case was set for trial. (R., p.37.) In anticipation of trial, the state disclosed its intent to call an expert witness to explain various aspects of gang culture. (R., pp.59-60.) Castro moved for an order in limine preventing the state from introducing “any mention of [his] gang affiliation.” (R., pp.87-92.) The state subsequently filed notice under Idaho Rule of Evidence 404(b) seeking to introduce evidence of Castro’s “gang association(s) or gang affiliation(s)” for the purpose of demonstrating how gang relations “were the core or primary motive for, and impetus of, the Riot.” (R., pp.107-09.) The district court determined such evidence was “very probative on issues of motive or intent,” and that any “prejudice under 403” did not “greatly outweigh[] the probative value.” (Tr., p.19, Ls.19-21; p.21, Ls.13-17.) Thus, the district court ruled that it would admit certain evidence of Castro’s gang affiliation at trial. (Tr., p.21, Ls.7-17.)

At trial, the state did not call its expert witness. (See generally Tr.) However, the prosecutor did present the testimony of two lay witnesses who were inmates at the time of the riot. (Tr., pp.173-92, 205-16.) They testified about the general nature of gang relations within the jail, described how gang rivalry caused the riot, identified Castro as a Sureño, and described his role in the riot. (See Tr., pp.173-92, 205-16.)

The jury convicted Castro of felony riot. (R., p.146; Tr., p.300, L.22 – p.301, L.14.) Thereafter, Castro admitted to the felony gang enhancement. (Tr., p.309, L.20 – p.314, L.3.) The district court 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.) Castro timely appealed. (R., pp.187-92, 207-19.)

## ISSUE

Castro states the issue on appeal as:

1. 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.

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Castro failed to show that the district court abused its discretion when it determined the risk of unfair prejudice from admitting evidence of Castro's gang affiliation did not substantially outweigh its high probative value?

## ARGUMENT

### Castro Has Failed To Show That The District Court Abused Its Discretion

#### A. Introduction

The district court determined that the danger of unfair prejudice did not substantially outweigh the probative value of evidence regarding Castro's gang affiliation. Castro argues the district court abused its discretion because the court did not reach its decision to admit such evidence in an exercise of reason.

#### B. Standard Of Review

The admissibility of evidence offered for a permitted purpose under I.R.E. 404(b) is subject to a two-tiered analysis. State v. Grist, 147 Idaho 49, 52, 205 P.3d 1185, 1188 (2009). First, the trial court must determine whether the other crime, wrong, or act, if established, would be relevant for a purpose other than propensity. Id. The appellate court exercises free review over this first inquiry. State v. Sheldon, 145 Idaho 225, 229, 178 P.3d 28, 32 (2008).

“Second, the trial court must engage in a balancing under I.R.E. 403 and determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence.” Grist, 147 Idaho at 52, 205 P.3d at 1188. “The balancing of the probative value and unfair prejudice of the evidence is within the discretion of the trial judge.” State v. Field, 144 Idaho 559, 569, 165 P.3d 273, 283 (2007). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal



standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. The District Court Did Not Abuse Its Discretion When It Determined That The Danger Of Unfair Prejudice Did Not Substantially Outweigh The Probative Value

The district court conducted an analysis that satisfied the second tier of analysis by weighing the probative value against the danger of unfair prejudice and determining that any danger of unfair prejudice could be mitigated by a limiting instruction. Rule 403 permits the trial court to exclude relevant evidence if it determines that the evidence’s “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” State v. Ruiz, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010) (citing I.R.E. 403). “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) (emphasis in original). Consequently, I.R.E. 403 “does not offer protection against evidence that is merely prejudicial in the sense of being detrimental to a party’s case.” State v. Floyd, 125 Idaho 651, 654, 873 P.2d 905, 908 (Ct. App. 1994); see also State v. Leavitt, 116 Idaho 285, 290, 775 P.2d 599, 604 (1989) (“[A]lmost all evidence in a criminal trial is demonstrably admitted to prove the case of the state, and thus results in prejudice to a defendant.”). Rather, “the rule protects against evidence that is unfairly prejudicial, that is, if it tends to suggest decision on an improper basis.” Floyd, 125 Idaho at 654, 873 P.2d at 908.

The risk of unfair prejudice to Castro was slight. Introducing evidence of Castro's affiliation with the Sureños was merely prejudicial in the sense of being detrimental to his case. The evidence was not offered as propensity evidence, which is the type of evidence Rule 404(b) prohibits, and consequently it did not suggest decision on an improper basis. It was introduced only to contextualize the impetus for the riot and to demonstrate Castro's motive for participating. (Tr., p.286, L.6 – p.287, L.5.) When admitted for this non-propensity purpose, the danger of unfair prejudice from this evidence's introduction was slight.

On the other hand, evidence of Castro's gang affiliation was highly probative of his motive. To demonstrate Castro's motive, the state presented the testimony of Agustin Olvera and Matthew Alsip who were inmates at the Canyon County Jail at the time of the riot. (Tr., pp.173-92, 205-16.) Both inmates testified that "immediately" upon entering the Canyon County Jail "everyone picks a side," either Sureños or Norteños. (Tr., p.192, L.20 – p.193, L.1; p.210, L.8 – p.211, L.6.) Olvera testified that the riot started because some Sureños took exception to a chant that certain members of the Norteños were reciting while working out. (Tr., p.176, L.16 – p.178, L.24.) Olvera also testified that he had been associated with the Norteños and that his three attackers—including Castro—were associated with the Sureños. (Tr., p.175, Ls.6-18; p.180, Ls.10-16.) Alsip, who associated with the Sureños, testified that during the riot he had to "at least look like [he] was doing something" or he "probably would have got like taken off on." (Tr., p.210, Ls.20-24.)

This testimony regarding Castro's gang affiliation was necessary to demonstrate his motive. Olvera's testimony explained how the mere recitation of a chant could amount to an act of disrespect that provoked such a violent reaction from Castro and other Sureños.

It also shows that Castro, and two other Sureños, targeted him due to his affiliation with the Norteños. Alsip’s testimony corroborated Olvera’s, but also provided important insight into why a member of the Sureños would have a motive to participate in the riot—i.e., fear from retribution from within the gang. Given I.R.E. 403’s strong preference for the admission of evidence and the highly probative nature of the state’s 404(b) motive evidence, the district court did not abuse its discretion when it determined that the danger of unfair prejudice did not substantially outweigh the probative value of evidence regarding Castro’s gang affiliation.

Castro incorrectly asserts that the district court did not reach its decision in an exercise of reason. First, Castro argues that the weight the district court placed on the probative value of the 404(b) evidence is not supported by applicable law or the record. He is incorrect.

Applicable law and the record support the weight that the district court placed on the probative value of the state’s 404(b) evidence. The Idaho Supreme Court has explained that Rule 404(b) is a rule of “inclusion which admits evidence of other crimes or acts relevant to an issue in the trial, except where it tends to prove *only* criminal disposition.” State v. Russo, 157 Idaho 299, 308, 336 P.3d 232, 241 (2014) (internal quotation omitted) (emphasis in original). Motive is “a well-accepted method of proving the ultimate facts necessary to establish the commission of a crime, without reliance upon an impermissible inference from bad character.” Russo, 157 Idaho at 308, 336 P.3d at 241 (internal quotation omitted). Therefore, testimony regarding gang “membership” or affiliation may be “properly admitted under I.R.E. 404(b) to demonstrate motive.” See State v. Almaraz, 154 Idaho 584, 591, 301 P.3d 242, 249 (2011). Because evidence of Castro’s gang affiliation

did not tend to prove only Castro's criminal disposition, applicable law supports the district court's discretionary decision to place weight on that evidence for the purpose of showing his motive under 404(b).

Furthermore, the record shows that the state introduced evidence of Castro's affiliation with the Sureños to demonstrate his motive for participating in the riot. (R., pp.107-09, 160; Tr., p.18, Ls.2-7; p.286, L.13.) The state's theory of the case was that the riot "was gang related" and that inmates, like Castro, who participated in the riot were motivated to do so because of their gang affiliations. (Tr., p.18, Ls.2-7; p.286, L.13.) Given the state's theory of the case, the evidence of Castro's gang affiliation was "highly relevant to [his] motive." (Tr., p.21, Ls.7-16.) Thus, the record supports the weight that the district court apportioned to evidence of Castro's gang affiliation.

Second, Castro erroneously argues that the district court's limiting instruction was insufficient to "cure the risk of undue prejudice." (Appellant's Brief, p.5.) Relying on State v. Johnson, 148 Idaho 664, 227 P.3d 918 (2010), Castro contends that the 404(b) evidence introduced in this case was "so pervasive" that a limiting instruction would not "sufficiently ameliorate the risk" that the jury had convicted him "because of his gang affiliation rather than on a determination of whether he [sic] the State has proved him guilty." (Appellant's Brief, p.8.) Castro is incorrect, and his reliance on Johnson is misplaced.<sup>1</sup>

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<sup>1</sup> Castro also references State v. Sheldon, 145 Idaho 225, 178 P.3d 28 (2008), but Sheldon is inapplicable. Even Castro concedes that the key issue with the limiting instruction given in Sheldon was that it was generic and did not specifically refer to the particular 404(b) evidence that the jury was supposed to ignore. (Appellant's Brief, p.8, n.4.); Sheldon, 145 Idaho at 229 n.3, 178 P.3d at 32 n.3. In sharp contrast to the limiting instruction in Sheldon, the limiting instruction in this case was unambiguous about which evidence the jury was to consider only for a limited purpose. (R., p.160.) The instruction was also unequivocally

The district court recognized that the evidence was prejudicial, but gave a limiting instruction that sufficiently mitigated the risk of unfair prejudice. The appellate court presumes that the jury followed the district court's instructions. State v. Johnson, 163 Idaho 412, 423, 245 P.3d 234, 245 (2018) (internal quotation omitted). The instruction given was based off of Idaho Criminal Jury Instruction 308, and specifically instructed the jury that "evidence that Mr. Castro is allegedly affiliated with a gang was admitted for the limited purpose of proving intent or motive for the act of rioting." (R., p.160.) It further instructed that such evidence could not be considered for any purpose "except the limited purpose for which it was admitted." (R., p.160.) The district court read this limiting instruction to the jury twice. (Tr., p.176, Ls.3-15; p.275, Ls.2-11.) Castro has not attempted to overcome the presumption that the jury followed the instruction. Therefore, presuming that the jury followed the district court's instruction, the evidence of Castro's gang affiliation was considered only for the limited purpose of proving his motive and thus the instruction sufficiently mitigated the risk of unfair prejudice.

Furthermore, this case is distinguishable from Johnson. In Johnson, the trial court admitted evidence of specific prior instances of similar misconduct. The defendant in that case was on trial for three counts of lewd and lascivious conduct with his minor daughter, and the trial court admitted testimony from the defendant's wife that he had sexually abused their minor daughter in the past. Johnson, 148 Idaho at 666-67, 227 P.3d at 920-21. The court also admitted evidence that the defendant had molested his [REDACTED] sister. Id. at 666, 227 P.3d at 920. The Idaho Supreme Court concluded that even a limiting

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clear about the limited purpose for which that evidence was admitted: "[E]vidence that Mr. Castro is allegedly affiliated with a gang was admitted for the limited purpose of proving intent or motive for the act of rioting." (R., p.160.)

instruction could not prevent the 404(b) evidence from prejudicing the defendant. Johnson, 148 Idaho at 670, 227 P.3d at 924.

Unlike Johnson, the limiting instruction here was sufficient because the type of 404(b) evidence admitted in this case is substantially different from the evidence admitted in Johnson. Unlike the 404(b) evidence admitted at Johnson's trial, the 404(b) evidence in this case did not show specific instances of prior similar misconduct. The evidence did not show that Castro had rioted or even engaged in violent or illegal behavior on prior occasions. The district court's instruction to the jury demonstrates this point: "It is not a crime to join, affiliate with, or to be a member of a gang. Mr. Castro is . . . not on trial for being affiliated with a gang." (Tr., p.176, Ls.6-9.) Moreover, contrary to Castro's contention, the state did not use the evidence to suggest that Castro was guilty of the charged crimes because of his gang affiliation. (See Tr., p.282, L.19 – p.288, L.19; p.297, L.2 – p.299, L.15.) The evidence here simply showed that Castro was affiliated with the Sureños and thus had a motive to participate in the riot. The limiting instruction was sufficient to prevent unfair prejudice from infecting the verdict.

In sum, the record reveals that the district court properly understood the probative value of the evidence of Castro's gang affiliation and exercised reason when it reached its decision to admit such evidence. Accordingly, Castro has shown no abuse of discretion in the district court's I.R.E. 403 ruling.

D. Any Error In Admitting Evidence Of Castro's Gang Affiliation Was Harmless

Even if the district court erred in admitting the evidence of Castro's gang affiliation, the error was harmless beyond a reasonable doubt. Error is not reversible unless it is prejudicial. State v. Stoddard, 105 Idaho 169, 171, 667 P.2d 272, 274 (Ct. App. 1983); see

I.C.R. 52 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). An error is not prejudicial, and is therefore harmless, if the reviewing court is able to declare beyond a reasonable doubt that the error did not contribute to the verdict. State v. Ruiz, 159 Idaho 722, 724, 366 P.3d 644, 646 (Ct. App. 2015). The state has the burden of demonstrating that the alleged error was harmless. State v. Perry, 150 Idaho 209, 222, 245 P.3d 961, 974 (2010).

The record reveals, beyond a reasonable doubt, that any error did not contribute to the verdict. At trial, the state presented overwhelming evidence of Castro’s guilt. The prosecutor introduced thirteen separate video recordings from the jail’s closed circuit security cameras depicting the riot. (State’s Exs. 1-13.) The video recordings clearly show Castro punching and kicking rival gang members with the assistance of other Sureños. (State’s Ex. 5, 15:08:39-15:09:06; State’s Ex. 11, 15:08:35-15:08:49.) The state also presented the testimony of two inmates who were present during the riot and whose testimony corroborated the video footage. (Tr., pp.173-92, 205-16.) Olvera specifically identified Castro as one of three Sureños who had punched and kicked him during the riot, which left him with welts and a bloody nose. (Tr., p.179, L.12 – p.180, L.16; p.188, Ls.1-5.) The state also introduced photographs of the inmates involved in the riot, pictures of their injuries, and pictures of blood spatter discovered after the riot. (State’s Exs.14-18; 20-25; 27-28; 30-39.) Finally, the state introduced a video call captured by the jail’s Telmate system wherein Castro laughingly tells a woman on the other end of the call that the state had charged him with riot and that jail security cameras had recorded him participating. (State’s Ex. 40.) The state presented minimal gang affiliation evidence when compared with the overwhelming evidence of Castro’s guilt. Based on the evidence

presented, coupled with the court's limiting instruction, any error in the admission of gang-related evidence was harmless beyond a reasonable doubt.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment entered upon the jury verdict finding Castro guilty of felony riot.

DATED this 13th day of November, 2019.

/s/ Justin R. Porter  
JUSTIN R. PORTER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of November, 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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/s/ Justin R. Porter  
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JRP/dd