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State v. Sams Appellant's Brief 2 Dckt. 43357

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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|----------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 43357 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR 2015-513 |
| v. |) | |
| |) | |
| SCOTT JEFFERY SAMS, |) | APPELLANT'S BRIEF |
| |) | IN SUPPORT OF |
| Defendant-Appellant. |) | PETITION FOR REVIEW |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Scott Jeffery Sams asks the Idaho Supreme Court to review the published opinion of the Idaho Court of Appeals, 2016 Opinion No. 60 (Ct. App. Sept. 12, 2016) (*hereinafter*, Opinion). He submits that the Opinion, which affirmed his Judgment of Conviction and Probation Order, is not in accord with applicable decisions of the Idaho Supreme Court and is in conflict with previous decisions of the Court of Appeals.

Specifically, the Opinion is contrary to the following decisions of the Idaho Supreme Court: *State v. Sheldon*, 145 Idaho 225, 230 (2008) (“[C]ompliance with I.R.E. 404(b) is mandatory and a condition precedent to admission of other acts evidence.”), as well as *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho

889, 893 (2011) (“The interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” (internal quotation marks and citation omitted)), and *State v. Moore*, 131 Idaho 814, 821 (1998) (“On review, rules of evidence are treated like statutes.”) Thus, Mr. Sams asks this Court to grant his Petition for Review and to ultimately vacate his conviction.

Statement of the Facts & Course of Proceedings

The State charged Mr. Sams by Information with aggravated assault, felony, in violation of Idaho Code §§ 18-901(b) and 18-905(a), and use of a deadly weapon in the commission of a crime, felony, in violation of I.C. § 19-2520. (R., pp.30-31.) Mr. Sams entered a not guilty plea to the charges. (R., p.33.)

Mr. Sams exercised his right to a jury trial. (See R., pp.118-24, 126-29.) At Mr. Sams’ jury trial, the following facts were adduced. Mr. Sams and Travis Ohlsson had known each other for a few years (Tr., p.128, L.24 – p.129, L.3, p.262, L.24 – p.263, L.10), and they arranged using the app Grindr that Mr. Ohlsson would spend a weekend at Mr. Sams’ residence. (Tr., p.156, L.3 – p.157, L.9, p.262, L.13 – p.264, L.4, p.268, L.25 – p.269, L.9.) Mr. Sams testified that he expected they would have sex (Tr., p.269, Ls.10-12), but Mr. Ohlsson testified he asked to hang out and needed a place to stay. (Tr., p.157, Ls.10-17.) Mr. Sams testified he and Mr. Ohlsson had sex and got high after Mr. Ohlsson arrived at the house. (Tr., p.269, Ls.13-24.) While Mr. Ohlsson testified he did not have any sexual contact with Mr. Sams (Tr., p.159, Ls.8-12), Officer Andrew Linn of the Boise Police Department testified Mr. Ohlsson told

him there was some sexual contact. (Tr., p.227, L.22 – p.228, L.8.) Mr. Sams further testified that the morning of the following Monday, he awoke to Mr. Ohlsson sexually penetrating him. (Tr., p.274, L.5 – p.275, L.17.)

Later that morning, Mr. Sams noticed the box of his HIV medication had gone missing from his bedroom. (Tr., p.277, Ls.8-22.) Mr. Sams testified he confronted Mr. Ohlsson about the missing pills, Mr. Ohlsson denied everything, and the two began to argue. (Tr., p.282, L.25 – p.283, L.6.) Mr. Ohlsson stripped naked to show he did not take anything, and then Mr. Ohlsson turned violent and began to shake Mr. Sams and push him around. (Tr., p.284, L.20 – p.286, L.12.) While Mr. Ohlsson was shaking and hitting him, Mr. Sams grabbed his show knife off a shelf. (Tr., p.286, L.15 – p.287, L.25.) Mr. Sams told Mr. Ohlsson to get out of his house and give his stuff back. (Tr., p.288, Ls.1-4.) Mr. Ohlsson then attacked Mr. Sams, and the two struggled over the knife. (Tr., p.288, Ls.5-12.) Mr. Sams screamed for help. (Tr., p.288, Ls.17-18.) Mr. Ohlsson took control of the knife and held it to Mr. Sams' chin, causing an injury. (Tr., p.288, L.22 – p.289, L.7.)

Mr. Ohlsson provided a different account of the incident. Mr. Ohlsson testified Mr. Sams accused him of stealing the pills, but Mr. Ohlsson did not steal the pills and was unaware they were in the house. (Tr., p.133, L.24 – p.135, L.3.) Mr. Sams became agitated, and after Mr. Ohlsson offered to help find the pills, he noticed Mr. Sams had a knife in his hand. (Tr., p.135, L.4 – p.136, L.2, p.136, Ls.22-25.) Mr. Sams continued to accuse Mr. Ohlsson of stealing the pills and stated he would gut Mr. Ohlsson like a pig. (Tr., p.136, Ls.3-21.) Mr. Sams then told Mr. Ohlsson to strip naked, and Mr. Ohlsson complied. (Tr., p.137, L.6 – p.138, L.8.) Mr. Sams threatened

to kill Mr. Ohlsson (Tr., p.139, Ls.4-8), and then lunged at Mr. Ohlsson with the knife. (Tr., p.140, Ls.13-15.) Mr. Ohlsson tried to get the knife away from Mr. Sams, and after he got it, Mr. Sams started screaming for help. (Tr., p.140, L.15 – p.141, L.10.) Mr. Ohlsson later noticed he had a cut on his arm and some scratches. (Tr., p.146, Ls.4-11.)

Mr. Sams and Mr. Ohlsson left the bedroom, and Mr. Ohlsson left the house through the front door while Mr. Sams went to the garage to get a shovel. (Tr., p.141, L.8 – p.142, L.17, p.293, L.16 – p.294, L.18.) Mr. Sams subsequently threw Mr. Ohlsson's clothes out of the house. (Tr., p.146, Ls.3-9, p.294, Ls.19-25.) Mr. Sams' roommate, who had been in the living room of the house, called 911. (Tr., p.188, L.8 – p.191, L.23.) When the police arrived at the scene, they detained and questioned Mr. Ohlsson (Tr., p.150, L.5 – p.152, L.17, p.222, Ls.3-21), and walked Mr. Sams' roommate out of the house (Tr., p.192, Ls.2-6).

There was then a standoff between the police and Mr. Sams for about five hours. Before the State's opening statement, Mr. Sams requested the State not be allowed to discuss the standoff with the officers in front of the jury, because Mr. Sams had not been charged with resisting and obstructing and evidence of the standoff was irrelevant and prejudicial. (Tr., p.109, L.22 – p.110, L.4.) The State argued the standoff was evidence of consciousness of guilt and identity. (Tr., p.110, L.16 – p.111, L.5.)

The district court initially determined sufficient facts existed to find the standoff happened. (Tr., p.113, Ls.17-19.) The district court determined the standoff could be perceived as another wrong or act under Idaho Rule of Evidence 404 (*hereinafter*, Rule 404), and ruled under Rule 404(b) the information was admissible for a non-propensity

purpose including identity or the absence of mistake or accident. (Tr., p.113, L.17 – p.114, L.2.) The district court also determined the evidence was admissible under Rule 403 because it was not unduly prejudicial to Mr. Sams. (Tr., p.114, Ls.2-3.)

Mr. Sams then brought to the district court's attention that he was entitled to notice of the standoff evidence under Rule 404(b). (See Tr., p.114, Ls.24-25.) The State argued the standoff evidence was not Rule 404(b) evidence because it was part and parcel to the incident, and it was not propensity evidence because it showed Mr. Sams was not in the right state of mind when he refused to come out and speak with law enforcement. (Tr., p.117, L.2 – p.118, L.6.) In response, Mr. Sams asserted the evidence was prejudicial and irrelevant to the incident. (Tr., p.118, Ls.7-19.)

The district court recognized the State had not provided notice of its intent to introduce Rule 404(b) evidence. (Tr., p.118, Ls.20-22.) The district court ruled evidence that Mr. Sams was anti-authoritarian and thus had a propensity to commit crimes was prohibited under Rule 404(a). (Tr., p.118, L.22 – p.119, L.1.) However, the district court determined that certain parts of the standoff showed consciousness of guilt and were parcel to the facts of the incident. (See Tr., p.119, Ls.2-5.) The district court determined the police's attempts to contact Mr. Sams during the standoff were not character or Rule 404(b) evidence requiring notice. (Tr., p.119, Ls.9-15.)

In its opening statement, the State told the jury it would hear about the time period before Mr. Sams was taken into custody. (Tr., p.127, Ls.9-10.) During the State's case-in-chief, Mr. Sams' roommate testified the police kept him away from the house for about five hours, and when he returned the house had been ransacked. (Tr., p.192, Ls.7-23.) Officer Kirk Rush testified Mr. Sams did not respond to the

officers' initial attempts to contact him, but the officers eventually made contact with Mr. Sams and took him into custody when he exited the house. (Tr., p.206, L.18 – p.207, L.14.)

On direct examination, Mr. Sams testified he sent a kite out while he was in jail requesting a picture be taken of his chin, but a picture was not taken. (Tr., p.289, L.12 – p.291, L.7.) The State argued Mr. Sams thereby opened the door for inquiry into the police response and his communications with the police. (Tr., p.297, L.16 – p.298, L.3.) The district court determined Mr. Sams had opened the door to his interactions with the police, including the police's prior attempts to investigate the incident. (Tr., p.298, L.17 – p.299, L.10, p.301, Ls.2-8.)

Thus, on cross-examination, Mr. Sams testified he had locked himself in the bathroom and initially did not know the police had arrived. (Tr., p.305, Ls.16-22.) He was unaware of calls to his cell phone about half an hour into the standoff, because he had no idea where his phone was. (See Tr., p.306, Ls.14-22.) About an hour later, Mr. Sams looked outside the window and saw the police. (Tr., p.306, L.23 – p.307, L.3.) The police tried to get his attention with their PA system, and Mr. Sams subsequently went to the back door of the house and made contact with law enforcement. (Tr., p.307, Ls.4-23.) The police asked Mr. Sams to come outside several times, but he remained inside the house. (Tr., p.307, L.24 – p.309, L.23.) At one point, the police threw a phone through a window so a negotiator could talk with Mr. Sams. (Tr., p.310, Ls.4-17.) Mr. Sams was arrested when he eventually went outside. (Tr., p.310, Ls.18-24.)

The jury acquitted Mr. Sams of felony aggravated assault and of the lesser-included offense of misdemeanor assault. (See Tr., p.380, L.20 – p.381, L.13; R., 159.)

The jury found Mr. Sams guilty of the lesser-included offense of misdemeanor disturbing the peace. (Tr., p.380, L.20 – p.381, L.2; R., p.159.)

The district court sentenced Mr. Sams to 180 days jail time, with credit for 107 days served and 73 days suspended. (Tr., p.393, Ls.1-19; R., p.163.) The district court placed Mr. Sams on probation for a period of two years. (Tr., p.393, Ls.19-21; R., p.163.) Mr. Sams filed a Notice of Appeal timely from the district court's Judgment of Conviction and Probation Order. (R., pp.168-70.)¹

On appeal, the Idaho Court of Appeals affirmed the judgment of the district court. (Opinion, p.5.) The Court of Appeals determined "[t]he term 'acts' or the phrase 'other acts'" in Rule 404(b) "encompass every fact in the case as opposed to the facts relating to the physical assault itself." (Opinion, p.4.) According to the Court of Appeals, "[t]he evidence at question here has nothing to do with propensity, and thus, is not the type of evidence for which Rule 404(b) notice must be given." (Opinion, pp.4-5.)

The Court of Appeals also stated Rule 404(b) "recognizes that evidence of 'other crimes, wrongs, or acts' may bear upon character." (Opinion, p.5.) The Court of Appeals determined "[t]he evidence at issue here simply does not fall in the I.R.E. § 404(b) concept of 'other crimes, wrongs, or acts.' The term 'acts' encompasses acts similar in nature to crimes or wrongs and which invoke propensity towards such

¹ About three months later, the State filed a Motion for Bench Warrant for Probation Violation. (R., pp.173-74.) The district court revoked probation and ordered Mr. Sams to serve the previously-suspended jail sentence. (Order Revoking Probation, Judgment of Conviction (Misdemeanor) and Commitment, Nov. 12, 2015.) The district court later approved the request by the Ada County's Sheriff's Office that Mr. Sams be granted early release time. (Approval of 5 Days of Early Release, Dec. 22, 2015.) Mr. Sams is currently not on the Ada County Jail's Inmate Roster. See Inmate Roster, Ada County Sheriff's Office, <https://adasheriff.org/webapps/sheriff/reports/inmates> (last accessed Oct. 11, 2016).

action and related bad character.” (Opinion, p.5.) The Court of Appeals wrote, “[a]s to the context of words, Idaho appellate courts have applied the maxim *noscitur a sociis*, which means ‘a word is known by the company it keeps.’” (Opinion, p.5 n.3 (quoting *State v. Schulz*, 151 Idaho 863, 867 (2001)). The Court of Appeals determined “the evidence at issue was not offered or admitted to prove character.” (Opinion, p.5.) Thus, the Court of Appeals determined “I.R.E. § 404(b) and its notice provisions do not apply.” (Opinion, p.5.)

Mr. Sams filed a Petition for Review.

ISSUE

Should this Court grant Mr. Sams' Petition for Review and ultimately vacate his conviction?

ARGUMENT

This Court Should Grant Mr. Sams' Petition For Review And Vacate His Conviction

A. Introduction

Mr. Sams asserts the Idaho Court of Appeals' Opinion is not in accord with applicable decisions of the Idaho Supreme Court and is in conflict with previous decisions of the Court of Appeals. Thus, this Court should grant Mr. Sams' Petition for Review and ultimately vacate his conviction.

B. There Are Special And Important Reasons For This Court To Exercise Its Discretion And Grant Review

"Granting a petition for review from a final decision of the Court of Appeals is discretionary on the part of the Supreme Court, and will be granted only when there are special and important reasons and a majority of the Justices direct that the petition be granted." I.A.R. 118(b). Idaho Appellate Rule 118(b) includes a non-exhaustive list of factors the Court should consider when determining whether or not to grant review. I.A.R. 118(b)(1)-(5). Factors include "[w]hether the Court of Appeals has decided a question of substance probably not in accord with applicable decisions of the Idaho Supreme Court or of the United States Supreme Court," and "[w]hether the Court of Appeals has rendered a decision in conflict with a previous decision of the Court of Appeals." I.A.R. 118(b)(2) & (3).

Mr. Sams asserts there are special and important reasons for this Court to grant review, because the Opinion is not in accord with applicable decisions of this Court and is in conflict with previous decisions of the Court of Appeals. The Idaho Rules of Evidence provide that character or propensity evidence is not admissible: "Evidence of

other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.” I.R.E. 404(b). However, other acts evidence may

be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that the prosecution in a criminal case shall file and serve notice reasonably in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intended to introduce at trial.

Id.

Here, the Court of Appeals determined “[t]he term ‘acts’ or the phrase ‘other acts’” in Rule 404(b) do not “encompass every fact in the case as opposed to the facts relating to the physical assault itself.” (Opinion, p.4.) The Court of Appeals noted Rule 404(b) “is principally designed to protect against admission of purely propensity evidence. The evidence at question here has nothing to do with propensity, and thus, is not the type of evidence of which Rule 404(b) notice must be given.” (Opinion, pp.4-5.)

However, the Court of Appeals’ determination that non-propensity other acts evidence is not subject to the notice requirements of Rule 404(b) is contrary to this Court’s decision in *State v. Sheldon*, 145 Idaho 225 (2008). In *Sheldon*, this Court observed Rule 404(b) “allows admission of other crimes, wrongs, or acts for purposes other than showing propensity, ‘provided that the prosecution in a criminal case shall *file and serve notice* reasonably in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intended to introduce at trial.” *Sheldon*, 145 Idaho at 230. The *Sheldon* Court held “compliance with I.R.E. 404(b) is mandatory and a condition precedent to admission of other acts evidence.” *Id.* Thus, the Opinion is not in accord with *Sheldon*.

The Court of Appeals further determined Rule 404(b) “recognizes that evidence of ‘other crimes, wrongs, or acts’ may bear upon character. The evidence at issue here simply does not fall in the I.R.E. § 404(b) concept of ‘other crimes, wrongs, or acts.’” (Opinion, p.5.) The Court of Appeals determined “[t]he term ‘acts’ encompasses acts similar in nature to crimes or wrongs and which invoke propensity toward such action and related bad character.” (Opinion, p.5.) Also taking into account “the evidence at issue was not offered or admitted to prove character,” the Court of Appeals determined “I.R.E. § 404(b) and its notice provisions do not apply.” (Opinion, p.5.)

The Court of Appeals’ determination the standoff evidence at issue here did not constitute other acts evidence within the scope of Rule 404(b) is not in accord with applicable decisions of the Idaho Supreme Court. This Court has held “[t]he interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” *Verska v. St. Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889, 893 (2011) (internal quotation marks and citation omitted). Additionally, this Court has held “[o]n review, rules of evidence are treated like statutes.” *State v. Moore*, 131 Idaho 814, 822 (1998).

The Court of Appeals’ interpretation of the scope of Rule 404(b) runs counter to this Court’s decisions in *Verska* and *Moore*. Based on *Moore*, the interpretation of Rule 404(b) on review must follow the rules of statutory interpretation this Court outlined in *Verska*. See *Verska*, 151 Idaho at 893; *Moore*, 131 Idaho at 822. The Court of Appeals’ determination that “[t]he term ‘acts’ encompasses acts similar in nature to

crimes or wrongs and which invoke propensity toward such action and related bad character” (Opinion, p.5), conflicts with *Verska*’s holding that the words of a statute or rule “must be given their plain, usual, and ordinary meaning.” See *Verska*, 151 Idaho at 893. “Act” has been defined as “[s]omething done or performed, esp. voluntarily; a deed.” *Black’s Law Dictionary* (10th ed. 2014). Nothing in the “literal words” of Rule 404(b) indicates the term “acts” should instead be read to only encompass “acts similar in nature to crimes or wrongs and which invoke propensity towards such action and related bad character.” See *Verska*, 151 Idaho at 893.

The Court of Appeals’ reading of Rule 404(b) is also in conflict with previous decisions of the Court of Appeals. See, e.g., *State v. Whitaker*, 152 Idaho 945, 949 (Ct. App. 2012) (“Although Idaho appellate courts have commonly used the terms ‘prior bad acts evidence’ or ‘other bad acts evidence’ as shorthand to refer to evidence governed by Rule 404(b), we have noted that the rule is not limited to ‘bad’ acts.”); *State v. Norton*, 151 Idaho 176, 190 (Ct. App. 2011) (“Norton is correct that Rule 404(b) is not limited to ‘bad’ acts. Rather, the rule encompasses ‘other crimes, wrongs, or acts.’”)

Additionally, the Court of Appeals’ use of the rules of statutory construction to interpret Rule 404(b) is not in accord with *Verska*. In a footnote, the Court of Appeals stated, “[a]s to the context of words, Idaho appellate courts have applied the maxim *noscitur a sociis*, which means ‘a word is known by the company it keeps.’” (Opinion, p.5 n.3 (quoting *State v. Schulz*, 151 Idaho 863, 867 (2001).)

But the Court of Appeals’ use of the maxim to support its reading of Rule 404(b) goes against this Court’s decision in *Verska*. This Court has described *noscitur a sociis*

as a “method of statutory construction . . . often wisely applied where a word is capable of many meanings.” *State v. Hammersley*, 134 Idaho 816, 821 (2000), *overruled on other grounds by State v. Poe*, 139 Idaho 885 (2004). The *Verska* Court held “that where the language of the statute is unambiguous, the clear expressed intent of the legislature must be given effect and there is no occasion for construction.” *Verska*, 151 Idaho at 895 (quoting *Worley Highway Dist. v. Kootenai Cnty.*, 98 Idaho 925, 928 (1978)) (internal quotation marks omitted). Before *Verska*, this Court likewise held that if the statutory language is unambiguous, “there is no occasion to consider rules of statutory construction.” *St. Luke’s Reg’l Med. Ctr., Ltd., v. Bd. of Comm’rs*, 146 Idaho 753, 755 (2009). Without any determination the words of Rule 404(b) are ambiguous, the Opinion’s use of *noscitur a sociis* is therefore not in accord with this Court’s decision in *Verska*. See *Verska*, 151 Idaho at 895.

The Court of Appeals’ Opinion is not in accord with applicable decisions of this Court and in conflict with previous decisions of the Court of Appeals. Thus, there are special and important reasons for this Court to grant review.

C. If This Court Grants Review, It Should Ultimately Vacate Mr. Sams’ Conviction

Mr. Sams asserts that if this Court grants review, it should analyze Rule 404(b) using the correct standards for interpreting statutes and rules. For the reasons contained in the initial briefing (App. Br., pp.8-17; Reply Br., pp.4-10), which are incorporated herein by reference, this Court should hold that the standoff evidence was evidence of other acts subject to the strictures of Rule 404(b). Because the State failed to serve notice, the standoff evidence was inadmissible. The district court’s ultimate determination admitting the standoff evidence on the basis it was not Rule 404(b)

evidence, despite the court's earlier ruling, was arbitrary and outside the boundaries of the court's discretion. The State has not proven the district court's error in admitting the standoff evidence was harmless beyond a reasonable doubt. Thus, this Court should ultimately vacate Mr. Sams' conviction.

CONCLUSION

For the above reasons, Mr. Sams respectfully requests that his Petition for Review be granted, with the result that his judgment of conviction be vacated and the case remanded.

DATED this 13th day of October, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of October, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SCOTT JEFFERY SAMS
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_____/s/_____
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BPM/eas