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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46749-2019
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR14-18-10922
v.)	
)	
BOB LESTER BOREN,)	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 CHERI C. COPSEY
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, the jury found Bob Lester Boren not guilty of felony attempted strangulation, and guilty of misdemeanor domestic battery. In this appeal, Mr. Boren asserts the district court abused its discretion when it excluded the evidence he offered of the alleged victim's motive to have him arrested to take his property, because the evidence was admissible under Idaho Rule of Evidence 403. The probative value of the evidence, on the alleged victim's later attempt to steal Mr. Boren's motorcycle, was not substantially outweighed by the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or waste of time.

Statement of the Facts and Course of Proceedings

The State charged Mr. Boren by Information with one count of attempted strangulation, for "applying pressure" to the neck of Kim Paddock, and one count of domestic battery, for "pushing" Ms. Paddock. (R., pp.30-32.) Mr. Boren pleaded not guilty to the charges. (R., p.33.)

During Mr. Boren's jury trial, the jury heard that Mr. Boren and Ms. Paddock had been married for about seven or eight years before getting a divorce. (*See* Tr. 12/17/18, p.153, Ls.2-23; Tr. 12/18/18, p.139, L.6 – p.140, L.10.) Years after the divorce, Ms. Paddock moved back in with Mr. Boren. (*See* Tr. 12/17/18, p.154, Ls.6-19; Tr. 12/18/18, p.143, L.23 – p.144, L.25.) She moved her personal belongings to his house in Parma, including several cars. (*See* Tr. 12/17/18, p.154, L.20 – p.155, L.2.) Ms. Paddock subsequently moved out, but left almost all of her personal belongings at Mr. Boren's house. (*See* Tr. 12/17/18, p.155, Ls.3-18; Tr. 12/18/18, p.145, L.20 – p.146, L.4.) Ms. Paddock testified for the State that she eventually filed a civil action after Mr. Boren refused to return her personal belongings, which gave her a

remedy to get them back once she ultimately prevailed. (*See* Tr. 12/17/18, p.155, Ls.19-24, p.172, Ls.4-11; State's Ex. 7 (default judgment against Mr. Boren).)

Ms. Paddock testified that an El Camino was one of her cars at Mr. Boren's property, and she knew it was her vehicle because it was titled to her. (Tr. 12/17/18, p.156, Ls.8-17.) The El Camino was part of the civil action. (*See* Tr. 12/17/18, p.156, Ls.18-22.) However, when asked on cross-examination if she was certain that it was not in Mr. Boren's name, she answered, "I'm not sure now because everything's all been mixed around but I bought the car." (Tr. 12/17/18, p.174, L.21 – p.175, L.7.) Mr. Boren testified in his defense that the El Camino was his, and Ms. Paddock claimed at times that it was hers. (Tr. 12/18/18, p.166, L.21 – p.167, L.10.)

Mr. Boren testified that he had tried four to six times to work with Ms. Paddock about returning her personal belongings, because his house was in foreclosure and he was planning to move. (*See* Tr. 12/18/18, p.146, L.18 – p.147, L.16.) After encountering a problem, he felt that he had to set some rules for her. (*See* Tr. 12/18/18, p.161, L.22 – p.162, L.14.) He testified that she came over about three or four times after he set the rules, but she would not comply with what he asked her to do. (*See* Tr. 12/18/18, p.164, L.12 – p.165, L.5.) He had no trespassing signs on the double gates into his fenced property. (*See* Tr. 12/18/18, p.153, L.15 – p.154, L.9.)

Ms. Paddock testified that she had attempted to get her personal belongings back before, but she had been mostly unsuccessful because she was not allowed to go into the backyard and get the items there. (*See* Tr. 12/17/18, p.157, Ls.13-24.) On redirect examination, she testified she had gone to Mr. Boren's house at least a dozen times to try to get her personal belongings, but he had not been willing to give her those items. (*See* Tr. 12/17/18, p.202, L.16 – p.203, L.5.) On cross-examination, she testified that she supposed Mr. Boren had told her there were certain rules for her to be able to come on his property, but she did not remember what they were. (*See*

Tr. 12/17/18, p.193, Ls.16-24.) She was willing to walk past a no trespassing sign onto his property. (See Tr. 12/17/18, p.193, Ls.13-15.)

One day, before the end of the civil action, Ms. Paddock and one of her adult sons with Mr. Boren, Louis “Bucky” Boren, went to Mr. Boren’s house. (See Tr. 12/17/18, p.156, L.23 – p.157, L.9; Tr. 12/18/18, p.161, Ls.14-17.) Mr. Boren testified he had been served with notice of the lawsuit about half an hour before Ms. Paddock and Bucky arrived. (See Tr. 12/18/18, p.160, L.7 – p.161, L.17.) Ms. Paddock testified Mr. Boren had changed his number and she could not call him, and she went into his backyard and shop building to look for him. (See Tr. 12/17/18, p.157, Ls.2-6.) When she heard somebody yell, she saw him on the back porch of the house, and she confirmed that he had been served. (See Tr. 12/17/18, p.157, Ls.6-9.) Mr. Boren testified that, when he saw Ms. Paddock and Bucky, he told them they were trespassing and needed to leave, without yelling. (See Tr. 12/18/18, p.170, Ls.12-18.)

On what happened next, Ms. Paddock testified that she talked with Mr. Boren on the back porch for a bit, and then they walked into the kitchen. (See Tr. 12/17/18, p.159, Ls.9-14.) She testified, “I looked around and said I was happy to see that most of my stuff was still there and then I asked him where was the ’76 El Camino and he screamed and grabbed me by the throat.” (Tr. 12/17/18, p.159, Ls.13-17.) She testified that Mr. Boren used two hands to grab her throat, put his thumbs where her old tracheotomy scar was, and wrapped his hands around her neck. (See Tr. 12/17/18, p.161, Ls.1-23.) Ms. Paddock testified that she blacked out, and when he came to, she saw Bucky beating Mr. Boren off her. (See Tr. 12/17/18, p.161, L.24 – p.162, L.7.)

However, Bucky testified for the State that he saw Mr. Boren shut the kitchen door on Ms. Paddock, and then he “reached his arm out to her throat.” (See Tr. 12/17/18, p.206, Ls.4-8.) Bucky testified that, right before Mr. Boren reached out, he and Ms. Paddock were talking about

the El Camino. (See Tr. 12/17/18, p.207, Ls.20-24.) According to Bucky, Mr. Boren “put his arm between the crack of the door and then out with his other to strangle her. That’s when I jumped up and beat him off my mom.” (Tr. 12/17/18, p.208, Ls.14-18.) Bucky testified that Ms. Paddock had “put her foot in between the door so that she could talk to him about it but he kind of slammed it on her.” (Tr. 12/17/18, p.210, L.24 – p.211, L.4.) He testified that Mr. Boren had reached out first with one hand, and then opened the door more to get a second hand around her. (See Tr. 12/17/18, p.211, L.21 – p.212, L.2.)

Mr. Boren testified that Ms. Paddock did not say anything to him, and he kept telling her she was trespassing and needed to leave. (See Tr. 12/18/18, p.172, Ls.3-14.) Ms. Paddock then asked Bucky if the El Camino was still at another part of the property, and Bucky said no. (See Tr. 12/18/18, p.174, Ls.15-22.) She headed toward the open back doors of the house, but Mr. Boren quickly went around her. (See Tr. 12/18/18, p.174, L.22 – p.176, L.12.) When he tried to shut the kitchen door, “She put her foot in the door.” (Tr. 12/18/18, p.181, L.11 – p.182, L.1.) He held the door on her foot for about three to five minutes. (See Tr. 12/18/18, p.182, Ls.13-24.) Mr. Boren testified that “she kept trying to come in the door. And then all of the sudden, the door slammed and it knocked me down onto the floor.” (Tr. 12/18/18, p.184, Ls.10-15.) Bucky then ran in and began hitting him in the head. (See Tr. 12/18/18, p.185, L.23 – p.186, L.10.) The next thing he was aware of happening was Ms. Paddock stating, “Well, Bucky, I guess we’re done here. Let’s leave,” followed by the noises of them leaving the house. (See Tr. 12/18/18, p.188, L.22 – p.189, L.2.) Mr. Boren later called 911. (Tr. 12/18/18, p.189, Ls.3-23; see State’s Ex. 9 (Mr. Boren’s full 911 call).)

Ms. Paddock also testified that she called 911. (See Tr. 12/17/18, p.164, L.20 – p.65, L.5; State’s Ex. 8 (Ms. Paddock’s 911 call).) She testified that she was coughing on the 911 call,

because she had been choked. (Tr. 12/17/18, p.166, Ls.12-16.) Ms. Paddock testified that, because of Mr. Boren, she also “had finger marks around my neck and it was all red around my tracheotomy.” (Tr. 12/17/18, p.167, L.21 – p.168, L.3.) A nurse testified for the State that she examined Ms. Paddock a few days after the incident, noticing resolving contusions on her neck that were external symptoms of a strangulation event. (See Tr. 12/17/18, p.239, Ls.2-25.)

Bucky testified that, right after the incident, Ms. Paddock was coughing, seemed sore, and had redness on her neck. (See Tr. 12/17/18, p.213, Ls.8-19.) According to Bucky, it was not typical for Ms. Paddock to have redness on her neck, but Mr. Boren testified he had seen redness similar to that depicted in the photographs of the redness on her neck many times before. (See Tr. 12/17/18, p.213, Ls.20-24; Tr. 12/18/18, p.200, L.19 – p.201, L.1; *see also* State’s Exs. 1-6 (photographs of Ms. Paddock taken shortly after the incident).)

Mr. Boren testified that police officers arrested him shortly after they arrived at his house. (See Tr. 12/18/18, p.194, L.14 – p.196, L.8.) One of the arresting officers testified for the State that Mr. Boren had initially reported that Ms. Paddock and Bucky had kicked in the back door, but later he retracted that statement and said she pushed her way around him to get into the house. (See Tr. 12/18/18, p.39, L.7 – p.41, L.6.)

During Mr. Boren’s cross-examination of Ms. Paddock, when he asked, “Isn’t it true that you wanted to have Bob arrested so you could get to the house and take whatever you wanted?”, she replied, “No.” (Tr. 12/17/18, p.175, Ls.8-10.) Mr. Boren subsequently asked Ms. Paddock if she had tried to take Mr. Boren’s yellow motorcycle two or three weeks after his arrest, and Mr. Boren’s sister had stopped her. (See Tr. 12/17/18, p.199, L.25 – p.200, L.4.) The State objected “on relevance and facts [not] in evidence grounds.” (Tr. 12/17/18, p.200, Ls.2-10.) The

district court told Mr. Boren, “If you have evidence along those lines, I’m going to allow you to introduce it but only for those purposes.” (Tr. 12/17/18, p.200, Ls.11-13.)

Later in the trial, Mr. Boren made an offer of proof on proposed testimony from his sister, Irene Falls. (See Tr. 12/18/18, p.75, L.22 – p.76, L.25.) Ms. Falls was under a subpoena. (See Tr. 12/18/18, p.75, L.25 – p.76, L.3.) Ms. Falls’ testimony would include that she and her husband went to Mr. Boren’s house about two weeks after the incident. (See Tr. 12/18/18, p.76, Ls.12-14.) Per Mr. Boren, “when they got there, Kim Paddock and Bucky Boren were—had their truck, Kim’s truck in the back of the house area. And they had a trailer. And they were loading one of Bob’s motorcycles up on the truck, that Irene confronted them.” (Tr. 12/18/18, p.76, Ls.14-19.) Ms. Falls’ husband called the police, and Ms. Paddock told Ms. Falls and then the police that she thought the place was abandoned. (Tr. 12/18/18, p.76, Ls.19-23.) Mr. Boren asserted, “The police came and made Kim unload the motorcycle and put it back.” (Tr. 12/18/18, p.76, Ls.24-25.)

Mr. Boren asserted the evidence was “offered for motive to show that Kim Paddock wanted Bob arrested so she could take property that was not hers, that was Bob’s. . . . [A]nd that that’s a fact of consequence that makes that motive more likely.” (Tr. 12/18/18, p.77, Ls.4-9.) Mr. Boren also asserted that Ms. Paddock’s statement that she thought the house was abandoned was a false statement. (See Tr. 12/18/18, p.77, Ls.10-14.) When the district court indicated the statement would be inadmissible hearsay, Mr. Boren clarified it was “not offered to prove that that’s what she thought,” but rather “to prove that that was an excuse she made trying to justify stealing the motorcycle.” (See Tr. 12/18/18, p.77, L.15 –p.78, L.7.)

The State argued the allegations were not relevant to the charge and highly prejudicial to Ms. Paddock. (See Tr. 12/18/18, p.79, L.10 – p.80, L.2.) The State noted, “the whole

circumstances of this other alleged attempted theft of a motorcycle, that's 404(b) territory.” (Tr. 12/18/18, p.84, L.24 – p.25, L.1.) Later, the State contended that the evidence was not very relevant and would confuse and mislead the jury. (*See* Tr. 12/18/18, p.93, L.18 – p.94, L.8.)

Mr. Boren explained the evidence was not offered to prove a proclivity to steal as the State had suggested, but instead to show Ms. Paddock “had a motive to have Bob arrested. And her motive was to take his property and steal from him.” (*See* Tr. 12/18/18, p.80, Ls.2-15.) He further asserted the statement about the house being abandoned was more evidence of her motive. (*See* Tr. 12/18/18, p.81, Ls.2-7.)

The district court suggested the evidence about the motorcycle was collateral, and the State in rebuttal would be able to “introduce evidence from the police as to what happened.” (*See* Tr. 12/18/18, p.86, L.22 – p.88, L.2.) The court was “about ready to say that under 403, we are going so far afield that it's not relevant and not probative. And it's also the unfair prejudice to the State at this point is overwhelming because there's no way for them to address something that they knew nothing about.” (Tr. 12/18/18, p.91, Ls.5-11.) Mr. Boren indicated the State had inferred knowledge from the police officers at the scene. (*See* Tr. 12/18/18, p.91, Ls.12-15.)

The district court determined, “this is a pure 403 analysis.” (Tr. 12/18/18, p.95, Ls.9-11.) The court stated: “If the evidence that was going to be introduced was that she and her son returned that afternoon or the next morning or even that weekend, I might consider that evidence of motive. In this case, though, it is so remote to the incident, three weeks, and it now is taking us off into a mini trial” (Tr. 12/18/18, p.95, Ls.12-19.) The district court determined that “this evidence may be relevant . . . because relevancy is easy to establish,” but “the probative value here is substantially outweighed by the danger not just of unfair prejudice to the State,

who's now going to have to completely redo this trial with a . . . new trial within a trial, but it also confuses the issues and misleads the jury." (Tr. 12/18/18, p.95, L.22 – p.96, L.4.)

Moreover, the district court determined it "also creates undue delay and a waste of time." (Tr. 12/18/18, p.96, Ls.5-6.) Thus, the court determined, "I'm excluding any evidence related to whatever is alleged to have happened in three weeks after this incident." (Tr. 12/18/18, p.96, Ls.6-8.) The district court thought, "it's so remote in time," and "there's going to be so much different evidence that's going to have to come in. We're going to have to have a complete new investigation." (Tr. 12/18/18, p.96, Ls.8-12.) The court found, "it doesn't really go to motive very much." (Tr. 12/18/18, p.96, Ls.12-14.) The district court stated the evidence would need to include "all the police reports," and "whether the motorbike was owned by her or whether it was part of the divorce settlement or the divorce decree. We don't have any of those things." (*See* Tr. 12/18/18, p.96, Ls.15-20.) The court concluded, "We are not going to have a trial within a trial." (Tr. 12/18/18, p.96, Ls.20-21.)

After this determination, the State objected to Mr. Boren's testimony that he wanted to keep an eye on both Ms. Paddock and Bucky because "[t]hey had a tendency to take things . . . that didn't belong to them." (*See* Tr. 12/18/18, p.171, Ls.2-8.) The district court overruled the objection, but asked defense counsel to change the subject. (*See* Tr. 12/18/18, p.171, Ls.9-15.) The court subsequently advised counsel that was not relevant, but the court was not going to strike the answer. (*See* Tr. 12/18/18, p.190, Ls.9-15.)

The jury found Mr. Boren not guilty of attempted strangulation, and guilty of domestic battery. (R., pp.106-07.) The district court imposed a sentence of 180 days jail time and placed Mr. Boren on supervised probation for a period of two years. (R., p.115.)

Mr. Boren filed a Notice of Appeal timely from his Judgment. (R., p.118-21.)

ISSUE

Did the district court abuse its discretion when it excluded the offered evidence on Ms. Paddock's motive to have Mr. Boren arrested so she could take his property, because the evidence was admissible under Idaho Rule of Evidence 403?

ARGUMENT

The District Court Abused Its Discretion When It Excluded The Offered Evidence On Ms. Paddock's Motive To Have Mr. Boren Arrested So She Could Take His Property, Because The Evidence Was Admissible Under Idaho Rule Of Evidence 403

A. Introduction

Mr. Boren asserts the district court abused its discretion when it excluded the offered evidence on Ms. Paddock's motive to have him arrested so she could take his property, because the evidence was admissible under Idaho Rule of Evidence 403. Contrary to the district court's determination (*see* Tr. 12/12/18, p.95, L.9 – p.96, L.24), the probative value of the evidence on Ms. Paddock's attempt to steal Mr. Boren's motorcycle was not substantially outweighed by the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or waste of time. Thus, the offered evidence was admissible under Rule 403, and the district court did not act consistently with the applicable legal standards when it excluded the evidence. The State will be unable to meet its burden of proving beyond a reasonable doubt that the district court's abuse of discretion was harmless.

B. Standard Of Review

An appellate court will not disturb a district court's determination under Rule 403 unless it is shown to be an abuse of discretion. *State v. Rawlings*, 159 Idaho 498, 506 (2015). When an appellate court reviews an alleged abuse of discretion by a trial court, the sequence of inquiry requires consideration of whether the trial 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 before it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

C. The District Court Did Not Act Consistently With The Applicable Legal Standards When It Excluded The Offered Evidence, Because The Probative Value Of The Evidence Was Not Substantially Outweighed By The Rule 403 Dangers Enumerated By The Court

Mr. Boren asserts the district court did not act consistently with the applicable legal standards when it excluded the offered evidence on Ms. Paddock's motive to have him arrested so she could take his property, because the probative value of the evidence was not substantially outweighed by the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or waste of time. Thus, the evidence on Ms. Paddock's attempt to steal Mr. Boren's motorcycle was admissible under Idaho Rule of Evidence 403.

Rule 403 provides that, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." I.R.E. 403.

The offered evidence at issue here, on Ms. Paddock's motive to have Mr. Boren arrested so she could take his property, involved the other act of Ms. Paddock trying to steal Mr. Boren's motorcycle some two or three weeks after his arrest. (*See* Tr. 12/18/18, p.75, L.22 – p.76, L.25.) Generally, "Evidence of a person's character or trait of character is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." I.R.E. 404(a)(1). Under one exception to the general rule, "Evidence of a witness's character may be admitted under Rules 607, 608 and 609." I.R.E. 404(a)(3). Rule 607 provides that, "Any party, including the party that called the witness, may attack the witness's credibility." I.R.E. 607.

Evidence of a crime, wrong, or other act "is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." I.R.E. 404(b)(1). However, "This evidence may be admissible for another purpose, such as

proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” I.R.E. 404(b)(2).

The Idaho Supreme Court has held, “Admissibility of evidence of other crimes, wrongs, or acts when offered for a permitted purpose is subject to a two-tiered analysis.” *State v. Grist*, 147 Idaho 49, 52 (2009). “First, the trial court must determine whether there is sufficient evidence to establish the other crime or wrong as fact.” *Id.* “The trial court must also determine whether the fact of another crime or wrong, if established, would be relevant.” *Id.* “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.” *Id.*

In this case, the district court impliedly determined that Ms. Paddock’s attempt to steal the motorcycle was sufficiently established as fact, and indicated it was at least of some relevance to motive. (*See* Tr. 12/18/18, p.95, L.22 – p.96, L.14.) The district court basically proceeded to the second part of the other acts analysis, determining under Rule 403 that the probative value of the offered evidence was substantially outweighed by the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, and waste of time. (*See* Tr. 12/18/18, p.95, L.22 – p.96, L.6.) But in making that determination, the district court did not act consistently with the applicable legal standards.

1. The Offered Evidence Was Of High Relevance And Probative Value

The district court did not properly weigh the probative value of the offered evidence, which was actually high. While the district court suggested the offered evidence was of some relevance, considering relevancy was easy to establish (*see* Tr. 12/18/18, p.95, Ls.22-24), the district court miscalculated the probative value of the evidence on Ms. Paddock’s motive to have Mr. Boren arrested. As the Idaho Supreme Court has explained, “[t]he United States Supreme

Court has recognized the important of effective cross-examination in securing” the right of a criminal defendant to be confronted with the witnesses against him, guaranteed by the Sixth Amendment to the United States Constitution.¹ See *State v. Araiza*, 124 Idaho 82, 91 (1993) (citing *Davis v. Alaska*, 415 U.S. 308 (1974)). The Sixth Amendment “allows a defendant to inquire on cross-examination into potential bias or motive of a witness.” *Id.* (citing *Davis*, 415 U.S. 308). “[I]n order to give meaning to the right to confront witnesses, the defendant must be permitted to do more than merely ask whether a witness is biased, but must be allowed to show why the witness might be biased by presenting the facts necessary to allow the jurors to form inferences regarding the witness’ impartiality.” *Id.* (citing *Davis*, 415 U.S. at 319).

Further, the United States Supreme Court has “recognized that the bias, prejudice, or motive of a witness to lie concerning issues presented in a trial is always material and relevant to effective cross-examination.” *Id.* (citing *Davis*, 415 U.S. at 316). After *Davis*, the United States Supreme Court observed, “Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.” *United States v. Abel*, 469 U.S. 45, 52 (1984).

The offered evidence, on Ms. Paddock’s motive to have Mr. Boren arrested so she could take his property, was essentially evidence of Ms. Paddock’s bias or motive to lie. Thus, contrary to the district court’s determination that the offered evidence had low relevance and probative value because the attempt to steal the motorcycle was collateral and remote in time (see Tr. 12/18/18, p.95, L.9 – p.96, L.14), the evidence as proof of bias was of high relevance and high probative value.

¹ Mr. Boren did not make a separate Sixth Amendment claim for why the offered evidence should be admitted.

2. The Probative Value Of The Offered Evidence Was Not Substantially Outweighed By The Dangers Enumerated By The District Court

The district court also did not properly weigh the dangers ostensibly presented by the offered evidence, because the probative value of the evidence was not substantially outweighed by the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, and waste of time. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Credibility was a central factor in this case. Ms. Paddock and Bucky's account of what happened at Mr. Boren's house was different from Mr. Boren's account. (See Tr. 12/17/18, p.159, L.9 – p.162, L.7, p.206, L.4 – p.212, L.22; Tr. 12/18/18, p.172, L.3 – p.189, L.23.) Further, Ms. Paddock's and Bucky's stories had discrepancies in some of the details, such as whether Mr. Boren allegedly grabbed Ms. Paddock in the kitchen or through the kitchen door. (See Tr. 12/17/18, p.159, Ls.13-17, p.206, Ls.4-8.)

With little in the way of other evidence relating to the domestic battery charge in particular, the credibility of Mr. Boren, Ms. Paddock, and Bucky was of great importance. The State could have addressed the offered evidence on rebuttal through recalling its witnesses. In fact, after the district court's determination at issue here, the State would briefly recall Ms. Paddock in its case in chief to clarify her previous testimony. (See Tr. 12/18/18, p.98, L.20 – p.100, L.25.)

Considering how important credibility was, the offered evidence would not have created a danger of confusing the issues or misleading the jury. The district court had already allowed the State to present evidence to impeach Mr. Boren's credibility, like the arresting officer's testimony on Mr. Boren changing his story on whether the door had been kicked in. (See Tr. 12/18/18, p.39, L.7 – p.41, L.6.) The offered evidence would likewise have addressed credibility, this time for Ms. Paddock and Bucky. Indeed, the district court had initially allowed

Mr. Boren to cross-examine Ms. Paddock on whether she had gone to Mr. Boren's house in the weeks after the arrest, to steal his motorcycle. (*See* Tr. 12/17/18, p.199, L.25 – p.200, L.13.)

The offered evidence also did not present a danger of undue delay. The district court stated that the issue of whether Ms. Paddock attempted to steal Mr. Boren's motorcycle would require evidence including "whether the motorbike was owned by her or whether it was part of the divorce settlement or the divorce decree." (*See* Tr. 12/18/18, p.96, Ls.17-20.) But the district court had permitted Ms. Paddock to testify on her ownership of and title to the El Camino. (*See* Tr. 12/17/18, p.156, Ls.8-22.) It would not have unduly delayed the trial for the parties to offer similar testimonial evidence on who owned the motorcycle.

Finally, the danger the offered evidence would waste time did not substantially outweigh the probative value of the evidence. As demonstrated above, rather than being of low relevance on a collateral issue, the evidence was highly probative for the key issue of credibility, a central factor the jury had to consider. Exploring Ms. Paddock's bias, in the form of her motive to have Mr. Boren arrested so she could take his property, would have helped the jury weigh the veracity of her testimony.

In sum, contrary to the district court's determination, the offered evidence on Ms. Paddock's motive to have Mr. Boren arrested so she could take his property was of high relevance and high probative value. The probative value of the evidence was not substantially outweighed by the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or waste of time. Thus, the district court did not act consistently with the applicable legal standards when it excluded the offered evidence. The evidence on Ms. Paddock's attempt to steal Mr. Boren's motorcycle was admissible under Rule 403. The district court abused its

discretion when it excluded the offered evidence on Ms. Paddock's motive to have Mr. Boren arrested. *See Lunneborg*, 163 Idaho at 863.

D. The State Will Be Unable To Prove That The District Court's Abuse Of Discretion Is Harmless

Where alleged error is followed by a contemporaneous objection and the appellant shows that a violation occurred, the State bears the burden of proving the error was harmless beyond a reasonable doubt, based upon the test articulated by the United States Supreme Court in *Chapman v. California*, 386 U.S. 18 (1967). *See State v. Perry*, 150 Idaho 209, 227 (2010). "To hold an error as harmless, an appellate court must declare a belief, beyond a reasonable doubt, that there was no reasonable possibility that such evidence complained of contributed to the conviction." *State v. Sharp*, 101 Idaho 498, 507 (1980) (citing *Chapman*, 386 U.S. at 24).

Mr. Boren asserts the State will be unable to meet its burden of proving the district court's abuse of discretion in excluding the offered evidence was harmless beyond a reasonable doubt. As discussed above, credibility was of great importance in this case. For example, in closing arguments, the State argued: "It comes down to who you believe. Do you believe Kim and [Bucky] and their version or do you believe the defendant's story?" (Tr. 12/18/18, p.270, Ls.7-9.) The State also argued that the differences in Ms. Paddock's and Bucky's testimony were important because it showed that they "have not collaborated in their testimony." (*See* Tr. 12/18/18, p.271, L.17 – p.272, L.3.) Further, the State contended: "The defendant's own words condemn him. He changes his story on scene. He's inconsistent." (Tr. 12/18/18, p.274, L.25 – p.275, L.1.) The State likewise argued that Mr. Boren's trial "testimony is a lot of inconsistencies." (Tr. 12/18/18, p.276, Ls.22-23.)

Perhaps most tellingly, in rebuttal, the State told the jury: “And I want you to ask yourselves why would Kim and [Bucky] have a motive to lie? What is their motive to lie?” (Tr. 12/18/18, p.286, Ls.4-7.) The State argued that Ms. Paddock and Bucky did not have a motive to lie to get her personal belongings back, because she had won the civil action and had “moved on.” (See Tr. 12/18/18, p.286, Ls.7-12.) Further, the State questioned why Ms. Paddock would talk about something uncomfortable to the jury, bring her son in, and risk potential criminal charges if she were lying. (See Tr. 12/18/18, p.286, Ls.12-17.) The State then contended: “What motivation does she have to make all of this up? Is it just to get back at Bob? We don’t have anything to support that.” (Tr. 12/18/18, p.286, Ls.17-19.) In other words, after the district court excluded the offered evidence on Ms. Paddock’s motive to have Mr. Boren arrested so she could take his property, the State argued that there was no evidence to support a motive to lie on Ms. Paddock’s part.

In light of credibility being a central factor in this case, the State will not be able to show, beyond a reasonable doubt, that there was no reasonable possibility that the district court’s abuse of discretion contributed to the conviction. *See Sharp*, 101 Idaho at 507. Rather, there is a reasonable possibility that the exclusion of the offered evidence on Ms. Paddock’s motive to have Mr. Boren arrested contributed to the conviction, especially considering the State’s argument in rebuttal. Thus, the State will be unable to meet its burden of proving the district court’s abusing its discretion in excluding the offered evidence was harmless beyond a reasonable doubt. *See Perry*, 150 Idaho at 227.

CONCLUSION

For the above reasons, Mr. Boren respectfully requests that this Court reverse the district court's decision to exclude the offered evidence on Ms. Paddock's motive to have him arrested, vacate his judgment, and remand the case to the district court for further proceedings on the misdemeanor domestic battery charge.

DATED this 15th day of January, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

BPM/eas