

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46749-2019
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR14-18-10922
)
 BOB LESTER BOREN,)
)
 Defendant-Appellant.)
)
)

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**

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STATEMENT OF THE CASE

Nature Of The Case

Bob Lester Boren appeals from the district court's exclusion of evidence at his jury trial for felony attempted strangulation, of which he was found not guilty, and misdemeanor domestic battery, of which he was found guilty.

Statement Of The Facts And Course Of The Proceedings

The state charged Boren with felony attempted strangulation and misdemeanor domestic battery. (R., pp. 30-31.) The matter proceeded to a jury trial. (See R., pp. 77-81, 108.)

The evidence at trial showed that Kim Paddock and Boren were married from 1997 to 2005. (12/17/2018 Tr., p. 153, Ls. 7-22; 12/18/2018 Tr., p. 139, Ls. 6-12.¹) Around 2015, Paddock moved in to Boren's home in Parma, Idaho, bringing with her all her personal belongings. (12/17/2018 Tr., p. 154, L. 6-22; 12/18/2018 Tr., p. 144, Ls. 6-10.) Specifically, Paddock brought "a bunch of my cars," including "a '76 El Camino, '69 GTO, '79 Phoenix. Some cars like that." (12/17/2018 Tr., p. 154, L. 23 – p. 155, L. 2.)

In August of 2017, Paddock moved out of Boren's home. (12/17/2018 Tr., p. 155, Ls. 6-10.) "Almost everything [she] owned" was left at the property, including the vehicles. (12/17/2018 Tr., p. 155, Ls. 11-18.) Both Boren and Paddock testified that they made several attempts to "work something out" so Paddock could get her property back. (12/17/2018 Tr., p. 155, Ls. 19-24; 12/28/2018 Tr., p. 146, Ls. 18-25.) Boren created "rules" Paddock was to follow to retrieve her property. (12/18/2018 Tr., p. 162, L. 5 – p. 164, L. 18.) Paddock tried to recover

¹ Transcripts for Days 2 and 3 of trial (12/18/2018 and 12/19/2018) were augmented into the record on appeal.

her property several times. (12/17/2018 Tr., p. 157, Ls. 13-16; p. 174, Ls. 3-7.) Her attempts were “[f]or the most part” unsuccessful. (12/17/2018 Tr., p. 157, Ls. 17-18.) She was able to recover some property, but not the El Camino because it was located in the back yard and Paddock “wasn’t allowed to go in the back yard on the property to get any” of her property. (12/17/2018 Tr., p. 157, Ls. 19-24.) Ultimately, Paddock filed a civil action and obtained a default judgment against Boren. (12/17/2018 Tr., p. 155, Ls. 19-24; p. 173, Ls. 19-25; State’s Ex. 7.) Boren was served with paperwork regarding the civil suit, which included Paddock’s El Camino. (12/17/2018 Tr., p. 156, Ls. 18-25; 12/18/2018 Tr., p. 160, Ls. 7-13.)

On May 29, 2018, Paddock went to Boren’s property with their [REDACTED] son, Louis “Bucky” Boren, to retrieve some of her property. (12/17/2018 Tr., p. 157, Ls. 2-6; p. 158, Ls. 4-10; p. 204, L. 25 – p. 205, L. 1.) Kim was not able to contact Boren on the phone to let him know that they were coming in advance. (12/17/2018 Tr., p. 157, Ls. 2-6; 12/18/2018 Tr., p. 218, Ls. 4-10.) Paddock testified that they made their way towards the backyard past no trespassing signs “because I had no way to get a hold of him.” (12/17/2018 Tr., p. 158, Ls. 17-24.) Paddock looked for Boren in the shop and then heard him yell out to her from the back porch of the home. (12/17/2018 Tr., p. 159, Ls. 3-8; p. 205, L. 19 – p. 206, L. 3; 12/18/2018 Tr., p. 170, Ls. 13-18.) Paddock asked Boren about the civil suit and told him why she was there. (12/17/2018 Tr., p. 157, Ls. 6-12.)

Paddock testified that they talked for a bit on the back porch of the house and then she followed Boren into the kitchen. (12/17/2018 Tr., p. 159, Ls. 12-14, 23-24.) Boren seemed defensive. (12/17/2018 Tr., p. 160, Ls. 2-11.) Paddock testified “I was happy to see that most of my stuff was still there.” (12/17/2018 Tr., p. 159, Ls. 15-16.) “[T]hen I asked him where was the ’76 El Camino and he screamed and grabbed me by the throat.” (12/17/2018 Tr., p. 159, Ls.

16-17.) Paddock testified that Boren grabbed her by the throat with both hands, he “[p]ut his thumbs where my trach[eotomy scar] was and wrapped his hands around my neck.” (12/17/2018 Tr., p. 161, Ls. 7-17.) Paddock quickly lost consciousness. (12/17/2018 Tr., p. 162, Ls. 2-3.) When Paddock regained consciousness, they were in the dining room and Bucky was beating Boren off of her. (12/17/2018 Tr., p. 162, Ls. 6-7.) Paddock testified that she ran and ended up in the driveway but didn’t remember how she got there. (12/17/2018 Tr., p. 164, Ls. 20-25.)

Bucky testified that Paddock and Boren had been talking as they headed towards the house. (12/17/2018 Tr., p. 206, Ls. 5-6.) Near the kitchen door, Bucky heard them talking about the El Camino. (12/17/2018 Tr., p. 207, Ls. 20-24.) Boren tried to close the kitchen door on Paddock. (12/17/2018 Tr., p. 210, Ls. 17-23.) Paddock “put her foot in between the door so that she could talk to him about it but he kind of slammed it on her.” (12/17/2018 Tr., p. 211, Ls. 2-4.) Bucky then saw Boren “reach[] out and tr[y] to strangle” Paddock. (12/17/2018 Tr., p. 208, Ls. 11-13.) Boren “put his arm between the crack of the door and then out with his other to strangle her.” (12/17/2018 Tr., p. 208, Ls. 16-17.) In response, Bucky “jumped up and beat him off” Paddock. (12/17/2018 Tr., p. 208, Ls. 17-18.) Then, he followed Paddock outside to her truck and she called the police. (12/17/2018 Tr., p. 213, Ls. 8-10.) Bucky testified that her neck was red, which was not normal. (12/17/2018 Tr., p. 213, Ls. 16-24.)

Boren also testified. Boren’s testimony was that Paddock headed for his house and he passed her to get to the doorway first. (12/18/2018 Tr., p. 175, L. 6 – p. 176, L. 12.) He told Paddock that she was trespassing and needed to leave. (12/18/2018 Tr., p. 181, Ls. 8-10.) Boren testified that he tried to shut the door and Paddock put her foot in the way. (12/18/2018 Tr., p. 181, L. 13 – p. 182, L. 1.) Boren testified that, as he was telling her to leave, the door slammed into him, knocking him to the ground, and Bucky ran in and started punching him in the head.

(12/18/2018 Tr., p. 184, L. 12 – p. 186, L. 2.) Boren denied choking Paddock. (12/18/2018 Tr., p. 202, Ls. 2-11.)

The evidence showed that Paddock called 911 from outside the house and reported that Boren choked her. (12/17/2018 Tr., p. 165, Ls. 2-5; State’s Ex. 8.) Boren called 911 shortly thereafter and reported that he had been beaten up in his home. (12/18/2018 Tr., p. 189, Ls. 15-23; Def. Ex. B.) Officers responded and took pictures of Paddock’s neck, which appeared red. (See 12/17/2018 Tr., p. 167, L. 19 – p. 171, L. 12; see also State’s Exs. 1-6.) A responding EMT testified that he observed Paddock at the scene and noticed that she was upset and had redness around her neck. (12/17/2018 Tr., p. 229, L. 20 – p. 230, L. 8.) A nurse practitioner examined Paddock two days after the incident. (12/17/2018 Tr., p. 234, Ls. 5-9.) She observed “what appeared to be resolving contusions on both sides of [Paddock’s] neck and in the center.” (12/17/2018 Tr., p. 239, Ls. 13-14.) Paddock reported that she had ongoing symptoms, including “intermittent sensation of restriction in her throat and some ongoing pain and continued nausea.” (12/17/2018 Tr., p. 241, Ls. 11-13.) On recommendation from the nurse practitioner, Paddock went to the emergency room when she was still experiencing “a choking feeling,” coughing, and a gag reflex days later. (12/18/2018 Tr., p. 98, L. 24 – p. 100, L. 15.)

Before putting on his case, Boren made an offer of proof relating to evidence he intended to put on. (See 12/18/2018 Tr., p. 76, Ls. 5-25.) Boren sought to call his sister Irene Falls to testify that she had to change the locks on Boren’s property after his arrest because it had been broken into; a few weeks after his arrest, on June 18, she and her husband went to check on Boren’s property again and encountered Paddock and Bucky. (12/18/2018 Tr., p. 76, Ls. 6-17.) They observed Paddock and Bucky loading one of Boren’s motorcycles onto a truck; the police came and told Paddock to return the motorcycle. (12/18/2018 Tr., p. 76, Ls. 14-25.) Falls would

testify that she heard Paddock say “she thought the place was abandoned.” (12/18/2018 Tr., p. 76, Ls. 20-22.) Boren sought to introduce the evidence “for motive to show that Kim Paddock wanted Bob arrested so she could take property that was not hers, that was [Boren]’s” and to show Paddock’s “false statement . . . that she thought the house was abandoned.” (12/18/2018 Tr., p. 77, Ls. 4-14.)

The state objected. (See 12/18/2018 Tr., p. 78, L. 13 – p. 80, L. 8.) The state argued that extrinsic evidence of a specific instance of conduct was inadmissible to attack Paddock’s character for truthfulness under Idaho Rule of Evidence 608(b).² (12/18/2018 Tr., p. 84, Ls. 17-23.) The state acknowledged that motive was “potentially an appropriate reason to bring in that type of evidence” under Rule 404(b), but argued that the evidence was irrelevant and unfairly prejudicial. (See 12/18/2018 Tr., p. 84, L. 24 – p. 85, L. 25; p. 91, Ls. 3-4; p. 93, L. 18- p. 95, L. 1.) Under Rule 403, the probative value was low because the evidence related to an incident “three weeks after the fact” of the charged conduct and it required the jury to “infer that the motive that existed then existed at the time of the offense, which there’s no evidence to suggest that other than the defendant’s statements that she was there to steal his stuff.” (12/18/2018 Tr., p. 93, L. 21 – p. 94, L. 5.) The state also argued that the evidence “seems very confusing and it’s going to mislead the jury about the nature of this case.” (12/28/2018 Tr., p. 94, Ls. 4-5.)

The district court expressed concern about the prejudice to the state: “Well, I’m saying, the State at this point would be entitled to continue this trial and do rebuttal because you’ve introduced a whole new avenue and issue that goes well beyond the incident and what happened that day.” (12/18/2018 Tr., p. 89, Ls. 10-14; p. 91, Ls. 7-11.) The district court also expressed

² Reference to “Rules” refers to the Idaho Rules of Evidence unless otherwise specified.

concern that the evidence was straying from the actual issues at trial: “But what I’m seeing is a case that’s going far afield. That’s what I’m seeing. And I’m trying to understand how this is relevant.” (12/18/2018 Tr., p. 90, Ls. 11-14; p. 91, Ls. 5-7.)

After taking a brief recess to consider the issue, the district court determined that the evidentiary issue came down to “a pure [Rule] 403 analysis.” (12/18/2018 Tr., p. 95, Ls. 2-11.)

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 – that’s what we’re going to have is a mini trial.

(12/18/2018 Tr., p. 95, Ls. 12-19.) The district court determined that “this evidence may be relevant – and because relevancy is easy to establish.” (12/18/2018 Tr., p. 95, Ls. 22-24.) However, “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 – new trial within a trial, but it confuses the issues and misleads the jury.” (12/18/2018 Tr., p. 95, L. 24 – p. 96, L. 4.) Additionally, it “creates undue delay and a waste of time.” (12/18/2018 Tr., p. 96, Ls. 5-6.) The district court excluded Boren’s offered evidence. (12/18/2018 Tr., p. 96, Ls. 6-8.) Boren did not call Falls to testify.

The jury found Boren not guilty of attempted strangulation but guilty of misdemeanor domestic battery. (R., pp. 106-07.) Boren was sentenced to 180 days jail, with 87 days credit and the remainder suspended, and placed on supervised probation for two years. (R., pp. 115.) Boren filed a timely notice of appeal. (R., pp. 118-20, 128-32.)

ISSUE

Boren states the issue on appeal as:

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?

(Appellant's brief, p. 9.)

The state rephrases the issue as:

Has Boren failed to show that the district court abused its discretion under Rule 403?

ARGUMENT

Boren Has Failed To Show That The District Court Abused Its Discretion Under Rule 403

A. Introduction

Boren argues that the district court abused its discretion when it excluded evidence that Paddock visited Boren’s property weeks after the charged events as evidence of her motive. (Appellant’s brief, p. 10.) Specifically, Boren asserts that the district court “did not act consistently with the applicable legal standards when it excluded the evidence” under Rule 403. (Appellant’s brief, p. 10.) Boren has failed to show that the district court abused its discretion. The district court properly weighed the probative value of the evidence and determined it was substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, and waste of time.

B. Standard Of Review

Appellate courts “apply an abuse of discretion standard on review of the trial court’s weighing of the probative value against any unfair prejudicial impact to decide whether the evidence should be admitted.” State v. Smith, 135 Idaho 712, 717, 23 P.3d 786, 791 (Ct. App. 2001); see also State v. Page, 135 Idaho 214, 218, 16 P.3d 890, 894 (2000). “The trial court’s [Rule] 403 determination will not be disturbed on appeal unless it is shown to be an abuse of discretion.” State v. Russo, 157 Idaho 299, 309, 336 P.3d 232, 242 (2014) (quotation marks and citation omitted). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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 available to it; and (4) reached its

decision by the exercise of reason.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. The District Court Did Not Abuse Its Discretion When It Excluded The Evidence, Because The Probative Value Was Substantially Outweighed By The Rule 403 Dangers

Boren offered evidence that Paddock allegedly tried to steal Boren’s motorcycle weeks after the crime to impeach Paddock. (See 12/18/2018 Tr., p. 76, L. 5 – p. 77, L. 14.) To the extent that Boren sought to introduce the evidence to show that Paddock has a character for untruthfulness, Rule 608(b) states that “extrinsic evidence is not admissible to prove specific instances of a witness’s conduct in order to attack . . . the witness’s character for truthfulness.” To the extent Boren sought to introduce the evidence to show that Paddock had a proclivity to steal, Rule 404(b)(1) states that “[e]vidence 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.” Thus, the only permissible basis for which Boren sought to introduce the evidence was as evidence of an “other act” to prove Paddock’s motive to lie to get Boren arrested, pursuant to 404(b)(2). However, evidence admissible under 404(b)(2) is nonetheless subject to the traditional Rule 403 balancing test. State v. Carson, 151 Idaho 713, 717, 264 P.3d 54, 58 (2011). And that is where this evidence fails.

Under Rule 403, a trial court has broad discretion to “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.” The district court acted consistently with legal standards when it assessed the probative value of Boren’s offered evidence and weighed it against the Rule 403 dangers.

The district court properly found that Boren's offered evidence, although relevant, had low probative value. The district court determined that the evidence was relevant, given the low bar for relevancy. (12/18/2018 Tr., p. 95, Ls. 22-24 ("this evidence may be relevant – and because relevancy is easy to establish".)) However, the district court determined that the probative value of the evidence was minimal to show motive to lie, in large part due to the remoteness of the alleged event from the crime. "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...." (12/18/2018 Tr., p. 95, Ls. 12-17.) The remoteness of the alleged event and the inferential leaps necessary to follow Boren's motive-theory of the evidence support the district court's conclusion that the probative value of the evidence is low. To be probative of motive, Boren's evidence would require the jury to believe that Paddock was attempting to steal Boren's motorcycle on June 18th and then infer from that fact that Paddock had planned this all along—that back in May, on the day of the crime, Paddock went to Boren's home with the intent to frame him for a crime and get him arrested; that she staged the redness on her neck and her 911 call; that she lied to the police, the EMT, and the nurse practitioner (not to mention the court and jury); that Bucky was in on the plan and lied, too; and that she did all this to get Boren out of the way so that several weeks later she could go to his property and (unsuccessfully) attempt to steal his motorcycle. As the district court found, Boren's evidence that his sister saw Paddock on the property three weeks later, even if she was trying to steal his motorcycle at that time, "doesn't really go to motive very much." (12/18/2018 Tr., p. 96, Ls. 12-14.)

The district court also weighed the other side of the equation: the danger of "unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, and needlessly

presenting cumulative evidence.” See I.R.E. 403. First, Boren’s proffered evidence would be unfairly prejudicial to Paddock and the state. The evidence Boren sought to introduce would “at least make an inference that [Paddock] had stolen other things and had broken into the house to steal those things,” even though Boren acknowledged that he didn’t have any evidence that Paddock had broken in to his home after his arrest. (See 12/18/2018 Tr., p. 81, L. 8 – p. 82, L. 25.) Additionally, as the district court recognized, the evidence would be highly prejudicial to the state “because there’s no way for them to address something they knew nothing about.” (12/18/2018 Tr., p. 91, Ls. 7-11.) The state did not have an opportunity to speak with Falls before trial, did not review or disclose the police reports from the June 18 event, did not call the responding officers, nor did it question Paddock about the incident when she testified. (See 12/18/2018 Tr., p. 85, Ls. 5-8; p. 88, Ls. 9-11.) The district court stated that admission of the evidence would cause “unfair prejudice to the State, who’s now going to have to completely redo this trial with a new – new trial within a trial.” (12/18/2018 Tr., p. 96, Ls. 1-3.)

Second, the evidence would cause undue delay and waste time. Because Boren’s evidence related to an entirely different event three weeks later that didn’t even involve Boren, none of the witnesses already called and evidence already presented had addressed the June 18 incident. (See 12/18/2018 Tr., p. 96, Ls. 9-12.) Accordingly, the state would be entitled to a large rebuttal case, in which it would likely need to call the responding officers and recall Paddock and Bucky to testify as to what happened on that day. Additional evidence would need to be developed. “You’re going to have to look at all the police reports. You’re going to have to look at 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.” (12/18/2018 Tr., p. 96, Ls. 16-20.) The district court acknowledged this delay—“the State at this point would be entitled to continue

this trial and do rebuttal because you've introduced a whole new avenue and issue that goes well beyond the incident and what happened that day." (12/18/2018 Tr., p. 89, Ls. 10-14.) Boren conceded as much. (12/18/2018 Tr., p. 89, Ls. 15-16.)

Third, the "mini trial" that this evidence would cause would also mislead the issues and confuse the jury. (12/18/2018 Tr., p. 95, L. 16 – p. 96, L. 4.) The jury in this case was tasked with determining whether Boren was guilty of attempting to strangle Paddock and/or battering her by pushing her. (See R., pp. 30-31.) Boren's offered evidence would shift the issue. Instead, the jury would be hearing evidence about something that allegedly happened weeks later, evidence related to whether Boren's house was broken into, who did it, if Paddock tried steal the motorcycle, who owned the motorcycle, if Paddock had rights to it under the default judgment or divorce decree, if she actually thought his property was abandoned, and why she may have made that statement. All of these side issues are "terribly collateral" and distract from the actual issues in the case by completely removing Boren and his conduct from the conversation. (See 12/18/2018 Tr., p. 88, Ls. 1-2.) The evidence confuses the issues and misleads the jury to decide if Paddock committed a theft (or multiple thefts) weeks after the crime. As the district court noted, this evidence would take the case "far afield." (12/18/2018 Tr., p. 90, Ls. 11-14.)

The district court acted consistently with applicable legal standards when it weighed the probative value of the evidence against the enumerated Rule 403 dangers. In doing so, the district court properly found that "the probative value here is substantially outweighed by the danger not just of unfair prejudice to the State . . . but it confuses the issues and misleads the jury . . . [and] creates undue delay and a waste of time." (12/18/2018 Tr., p. 95, L. 24 – p. 96, L. 6.) The district court did not abuse its discretion when it excluded Boren's offered evidence.

Boren argues that the district court erred in determining that the probative value of the evidence was substantially outweighed by the Rule 403 dangers. First, Boren argues that “the district court miscalculated the probative value of the evidence on Ms. Paddock’s motive to have Mr. Boren arrested.” (Appellant’s brief, p. 12.) As discussed above, the district court acknowledged that the evidence was relevant and probative of motive, but properly considered the remoteness of the event in determining that the probative value was low.

Boren then argues that “[t]he 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.” (Appellant’s brief, p. 14.) However, the district court, in its discretion, properly considered the Rule 403 dangers and determined that they outweighed the probative value. Boren attempts to compare the offered evidence to the state’s evidence of impeachment against Boren. (Appellant’s brief, pp. 14-15.) However, the differences are significant. The impeachment evidence against Boren that he cites to was the testimony of the responding officer, who stated that Boren’s story changed regarding whether or not his door had been kicked in before Bucky beat him. (See 12/18/2018 Tr., p. 39, L. 7 – p. 41, L. 6.) That evidence related directly to the crime at issue, as it was Boren’s inconsistent description of what happened. The evidence Boren sought to introduce to impeach Paddock was unrelated to the crime; Boren sought to introduce evidence that his sister saw Paddock allegedly stealing a motorcycle weeks later to try and create an inference that Paddock had a motive to lie weeks earlier.

Boren was properly allowed to impeach Paddock in the same way that the state impeached Boren—by pointing out inconsistencies in her story. (See 12/17/2018 Tr., p. 192, Ls.

16-24; p. 194, L. 21 – p. 195, L. 13; p. 196, L. 24 – p. 197, L. 13.) Additionally, Boren was allowed to cross-examine Paddock about her bias and specifically asked if Paddock “wanted [Boren] arrested so [she] could get to the house and take whatever [she] wanted,” and if it was “pretty convenient” for her to have Boren arrested and out of the way so that she “could go onto his property and take both [her] property and [Boren’s] property.” (12/17/2018 Tr., p. 175, Ls. 8-9; p. 199, L. 17 – p. 200, L. 2.) Boren has failed to show that the district court abused its discretion when it excluded the offered evidence under Rule 403.

D. Even If The District Court Erred By Excluding The Evidence, That Error Was Harmless

“Under the harmless error standard, the defendant has the initial burden of establishing an error, at which point the State has the burden of proving beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” State v. Abdullah, 158 Idaho 386, 416, 348 P.3d 1, 31 (2015) (quotation marks and citation omitted). “Where an error concerns evidence omitted at trial, the test for harmless error is whether there is a reasonable possibility that the lack of excluded evidence contributed to the verdict.” State v. Barcella, 135 Idaho 191, 197, 16 P.3d 288, 294 (Ct. App. 2000).

As discussed above, Boren has failed to show that the district court abused its discretion under Rule 403. Even if the district court did abuse its discretion by excluding the evidence, that error was harmless. Paddock’s testimony was corroborated by Bucky’s testimony, as well as by observations of her physical and medical state that were documented and testified to by law enforcement and medical personnel. That evidence would not have been undermined by Boren’s evidence of an alleged motorcycle theft three weeks later. Thus, the exclusion of Boren’s evidence did not contribute to the verdict.

Paddock's testimony was supported by corroborating evidence at trial. Paddock testified that Boren attacked her inside his kitchen. (See 12/17/2018 Tr., p. 159, L. 12 – p. 162, L. 18.) Bucky similarly testified that that Boren attacked Paddock at the kitchen door. (12/17/2018 Tr., p. 208, Ls. 11-18.) Paddock called 911 and reported that she had been choked; on the call, she can be heard coughing. (State's Ex. 8.) When officers and EMTs arrived on scene, they took photographs of Paddock's neck, which showed redness. (State's Exs. 1-6.) The officer examined Boren's kitchen, which showed signs that a struggle had taken place. (12/18/2018 Tr., p. 41, Ls. 21-24.) The officer also testified that Paddock was complaining of pain and that her neck was red. (12/18/2018 Tr., p. 35, L. 18 – p. 36, L. 7.) The EMT similarly testified that Paddock was upset, her breathing was increased, and her neck was red. (12/17/2018 Tr., p. 229, L. 20 – p. 230, L. 8.) Paddock was examined by a nurse practitioner days later. (12/17/2018 Tr., p. 234, Ls. 5-9.) The nurse testified that Paddock's symptoms were consistent with what Paddock reported had occurred, and that she was concerned by Paddock's report of continuing symptoms and recommended Paddock see a doctor. (See 12/17/2018 Tr., p. 239, L. 13 – p. 241, L. 13.) Paddock testified that she did in fact go see a doctor when she was still experiencing symptoms several days after the incident. (12/18/2018 Tr., p. 98, L. 24 – p. 100, L. 15.) An emergency room doctor also testified as an expert that symptoms such as coughing and pain swallowing (symptoms Paddock reported) are commonly reported in chokings or strangulations, and that a victim's memory or perception of consciousness during such an event can be affected. (12/18/2018 Tr., p. 114, L. 20 – p. 115, L. 1; p. 116, L. 18 – p. 117, L. 11.) The overwhelming corroborating evidence presented to the jury at trial supported the jury's verdict.

Furthermore, Boren's evidence of an alleged motorcycle theft weeks later is too tenuous for the jury to have believed that it proved Paddock lied about what happened on May 29th. As

discussed above, for Boren's evidence to go to Paddock's motive to lie, the jury would need to believe that the entire May 29th crime was an elaborate ruse concocted by Paddock. The jury would have to make the illogical assumption that Paddock went to Boren's property that day with the specific goal of framing him for a crime so he would be arrested and she could try to steal his motorcycle weeks later. Beyond being far-fetched, that theory of the evidence would necessarily require the jury to conclude that Paddock staged the crime, faked her 911 call, faked the redness on her neck, lied to law enforcement, lied to the EMT, lied to the nurse practitioner, needlessly followed up with a doctor, and lied to the state, the court, and the jury. There is no evidence of that. Boren's evidence does not show that Paddock had a motive to lie and sheds no light on the issues or evidence before the jury. The exclusion of Boren's evidence did not contribute to the verdict, and thus the alleged error of excluding the evidence is harmless.

Boren argues that the exclusion of evidence was not harmless because "credibility was of great importance in this case." (Appellant's brief, p. 16.) However, Boren was able to attack Paddock's credibility and address her potential motive to lie. Boren testified that Paddock had stolen from him in the past and he argued that her story was inconsistent. (See 12/17/218 Tr., p. 150, Ls. 21-23; p. 151, Ls. 8-9; p. 192, Ls. 16-24; p. 194, L. 21 – p. 195, L. 13; p. 196, L. 24 – p. 197, L. 13; 12/18/2018 Tr., p. 208, Ls. 6-8; p. 209, Ls. 7-9; p. 171, Ls. 2-8; p. 196, L. 21 – p. 197, L. 2; p. 281, L. 18 – p. 284, L. 12.) Boren specifically cross-examined Paddock about her potential motive to lie, asking: "Isn't it true that you wanted to have Bob arrested so you could get to the house and take whatever you wanted?" (12/17/2018 Tr., p. 175, Ls. 8-9.) Paddock answered, "No." (12/17/2018 Tr., p. 175, L. 10.) Later, he continued that line of questioning:

Q. Once Bob had been arrested and was out of the way, that was pretty convenient for you, wasn't it?

A. What do you mean?

Q. It means that you could go onto his property and take both your property and Bob's property, correct?

A. Not correct.

Q. You tried to do that, didn't you?

A. No.

(12/17/2018 Tr., p. 199, L. 17 – p. 199, L. 24.) Boren was able to attack Paddock's credibility and address her potential motive to lie. Thus, even if the district court abused its Rule 403 discretion by excluding Boren's other evidence, which it did not, the error did not contribute to the outcome at trial and is therefore harmless.

CONCLUSION

The state respectfully requests this Court affirm the district court's exclusion of the evidence and Boren's conviction.

DATED this 3rd day of April, 2020.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of April, 2020, 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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KLJ/dd