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### Sate v. Boren Appellant's Reply Brief Dckt. 46749

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

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46749-2019
	)	
v.	)	CANYON COUNTY NO. CR14-18-10922
	)	
BOB LESTER BOREN,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	

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**REPLY BRIEF OF APPELLANT**

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**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. Mr. Boren appealed, asserting the district court abused its discretion when it excluded the evidence he offered of the motive of the alleged victim, Kim Paddock, to have him arrested so she could take his property, because the evidence was admissible under Idaho Rule of Evidence 403. The probative value of the evidence showing Ms. Paddock'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.

In its Respondent's Brief, the State argues that 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. (*See* Resp. Br., pp.8-14.) The State also argues that, even if the district court abused its discretion by excluding the evidence, the error was harmless. (*See* Resp. Br., pp.14-17.) This Reply Brief is necessary to address the State's unavailing arguments.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Boren's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court abuse its discretion when it excluded the offered evidence of 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 Of 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 of 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. The probative value of the evidence of 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 has not met its burden of proving beyond a reasonable doubt that the district court's abuse of discretion was harmless.

#### B. 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 of 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 of Ms. Paddock's attempt to steal Mr. Boren's motorcycle was admissible under Idaho Rule of Evidence 403.

The offered evidence of 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, and thus of high relevance and high probative value. Leaning on the district court's determinations, the State instead contends, "The remoteness of the alleged event and the inferential leaps necessary to follow [Mr.] Boren's motive-theory of the evidence support the district court's conclusion that the probative value of the evidence is low." (*See Resp. Br.*, p.10.) However, Ms. Paddock's attempt to take Mr. Boren's motorcycle, occurring some two to three weeks after the incident at issue here, was not remote in time. *See State v. Missouri*, 714 N.W.2d 595, 597-602 (Wis. Ct. App. 2006) (holding that evidence that the arresting officer had mistreated another black person in June 2003 was relevant to the officer's motive to lie about the January 2004 arrest of the defendant, and the evidence was "not remote in time"); *see also People v. Szvec*, 271 A.D.2d 322 (N.Y. App. Div. 2000) (memorandum decision) (holding that evidence of the defendant's prior civil suit against two of the arresting officers was "not too remote or speculative to be probative of the degree of hostility the police officers allegedly held towards him").

Further, 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 State, reliant on the district court's reasoning, also argues that the probative value of the evidence was substantially outweighed by those Rule 403 dangers. (*See Resp. Br.*, pp.10-13.) By depending on the district court's analysis, the State's argument on this point suffers from the same infirmities. The State's argument downplays the importance of the offered evidence of Ms. Paddock's motive to have Mr. Boren arrested so she could take his property. Both the United States Supreme Court and the Idaho Supreme Court have "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.” *State v. Araiza*, 124 Idaho 82, 91 (1993) (citing *Davis v. Alaska*, 415 U.S. 308, 316 (1974)). Because the credibility of the respective parties was a central factor in this case, the Rule 403 dangers enumerated by the district court and echoed by the State did not *substantially* outweigh the probative value of the offered evidence. *See also State v. Palmer*, 110 Idaho 142, 146 (Ct. App. 1985) (“The pivotal point is the unfairness of any prejudice. Prejudice alone will not tilt the scale against admission of the evidence. Probative evidence is always prejudicial to someone.”) (internal quotation marks omitted).

Despite the State’s unavailing arguments to the contrary, the offered evidence of 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 of 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 of Ms. Paddock’s motive to have Mr. Boren arrested. *See Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

C. The State Has Not Proven That The District Court’s Abuse Of Discretion Is Harmless

The State has not met its burden of proving beyond a reasonable doubt that the district court’s abuse of discretion in excluding the offered evidence was harmless. The State argues the exclusion of the evidence did not contribute to the verdict, because Ms. Paddock’s testimony was corroborated by evidence that would not have been undermined by the excluded evidence; namely, Bucky’s testimony and observations of Ms. Paddock’s physical and mental state by law

enforcement and medical personnel. (*See* Resp. Br., pp.14-15.) However, the State in its closing argument presented the case as a credibility contest between, respectively, Ms. Paddock and Bucky, and Mr. Boren. (*See* Tr. 12/12/18, p.270, Ls.7-9.) Further, the State’s argument, relying on “[t]he overwhelming corroborating evidence presented to the jury at trial” (*see* Resp. Br., p.15), uses the improper approach to harmless error analysis, as the Idaho Supreme Court has recently clarified. *See State v. Garcia*, No. 46253, slip. op. at 12 (Idaho Apr. 28, 2020) (“[W]e reiterate that the proper showing for ‘harmless error’ is *not* ‘overwhelming evidence’ of the defendant’s guilt.”). Thus, the State has failed to prove that the offered evidence would not have affected the jury’s assessment of the parties’ respective credibility.

The State also contends that the offered evidence “is too tenuous for the jury to have believed that it proved [Ms.] Paddock lied about what happened on [the day of the incident].” (*See* Resp. Br., p.15.) But while the State argues that there “is no evidence” that Ms. Paddock made up her account of the incident to facilitate her later taking of Mr. Boren’s property (*see* Resp. Br., p.16), the very evidence that Mr. Boren offered would have supported such an inference. Thus, the State’s harmless error argument mirrors the State’s closing argument. 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 in closing that there was no evidence to support a motive to lie on Ms. Paddock’s part. (*See* Tr. 12/18/18, p.286, Ls.4-19.)

Additionally, the State argues the exclusion of the evidence did not contribute to the verdict, because Mr. Boren “was able to attack [Ms.] Paddock’s credibility and address her potential motive to lie” on cross-examination. (*See* Resp. Br., pp.16-17.) This argument by the State ignores the fact that the district court’s error here deprived Mr. Boren of the opportunity to present extrinsic evidence of Ms. Paddock’s bias or motive to lie. As the United States Supreme

Court has noted, “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 Court also wrote, “The ‘common law of evidence’ allowed the showing of bias by extrinsic evidence, while requiring the cross-examiner to ‘take the answer of the witness’ with respect to less favored forms of impeachment.” *Id.* Likewise, the *Abel* Court observed, “The Courts of Appeals have upheld use of extrinsic evidence to show bias both before and after the adoption of the Federal Rules of Evidence.” *Id.* at 51.

The United States Supreme Court in *Abel* embraced the use of extrinsic evidence to show a witness’ bias, holding, “it is permissible to impeach a witness by showing his bias under the Federal Rules of Evidence just as it was permissible to do so before their adoption.” *Id.* The district court’s exclusion of the offered evidence deprived Mr. Boren of the opportunity to present extrinsic evidence of Ms. Paddock’s bias or motive to lie. The State has failed to show this deprivation, in the face of the jury’s entitlement to assess all evidence which might bear on the accuracy and truth of a witness’ testimony, did not contribute to the conviction. *See id.* at 52. Thus, the State has not met its burden of proving beyond a reasonable doubt that the district court’s abuse of discretion in excluding the offered evidence was harmless. *See State v. Perry*, 150 Idaho 209, 227 (2010).

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Boren respectfully requests that this Court reverse the district court's decision to exclude the offered evidence of 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 15<sup>th</sup> day of May, 2020.

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

CERTIFICATE OF SERVICE

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

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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

BPM/eas