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### State v. Estrada Appellant's Brief Dckt. 47389

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

STATE OF IDAHO,	)	
	)	NO. 47389-2019
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY NO. CR28-18-
v.	)	15045
	)	
MELLISA ANN ESTRADA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI**

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**HONORABLE LANSING L. HAYNES  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Mellisa Estrada appeals from her judgment of conviction for forgery and grand theft of a financial instrument. During Ms. Estrada's jury trial, the district court abused its discretion in two ways: First, by allowing the State to introduce irrelevant and prejudicial testimony that Ms. Estrada was fired from her job, and second, by allowing the State to introduce irrelevant evidence that her employer modified its policies in response to these alleged crimes. This Court should vacate Ms. Estrada's judgment of conviction and remand this case to the district court for a new trial.

### Statement of Facts and Course of Proceedings

The State charged Ms. Estrada with forgery and grand theft of a financial instrument for allegedly tricking her employer, Safe Passage Violence Prevention, into issuing two checks to pay Ms. Estrada's rent, and forging a lease agreement to make it appear as though the checks went to pay the rent of two of Safe Passage's clients. (R., pp.14–25, 134–35.)

According to the State's witnesses at trial, Ms. Estrada was the housing advocate at Safe Passage in March 2018. (Tr.,<sup>1</sup> p.202, Ls.1–5.) After she was fired from her job in the spring of 2018, her supervisor, Ms. Wheeler, found three documents in Ms. Estrada's desk that Ms. Wheeler could not match to any client files and which she believed looked suspicious. (Tr., p.215, L.23–p.231, L.4, p.296, L.25–p.297, L.5; *see also* Exs.,<sup>2</sup> pp.3–13.) After looking into those documents, Ms. Estrada's superiors at Safe Passage came to believe that two checks Ms. Estrada had requested to help two of Safe Passage's clients pay for housing back in March

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<sup>1</sup> Citations to "Tr." refer to the trial transcript.

<sup>2</sup> Citations to "Exs." refer to the .pdf document containing the non-confidential exhibits in this case.

2018—one for \$200 and one for \$450—instead went to pay Ms. Estrada’s own rent. (Tr., p.208, L.2–p.215, L.22, p.231, L.5–p.251, L.2, p.297, L.3–p.306, L.8; *see also* Exs., pp.14, 20, 23–25, 32–34.) They concluded as much despite the oversight required of that type of funding request; for example, Safe Passage is subject to frequent audits and, per Safe Passage’s policies, three of Ms. Estrada’s superiors signed off on both of the checks, and a board member also signed off on the second check because it was for an amount over \$300. (Tr., p.203, L.16–p.208, L.1, p.265, L.11–p.273, L.3, p.275, L.5–p.280, L.14, p.289, L.25–p.291, L.24, p.292, L.22–p.296, L.24, p.311, L.3–p.317, L.25, p.321, L.23–p.327, L.24, p.334.) The State also presented evidence that Ms. Estrada was behind on her rent in March 2018, and the company that managed Ms. Estrada’s rental unit received the \$200 and \$450 checks from Safe Passage to pay Ms. Estrada’s rent. (Tr., p.347, L.6–p.376, L.19; *see also* Exs., pp.35–44.) Ms. Estrada did not present any evidence on her own behalf, and the jury returned guilty verdicts on both counts. (Tr., p.417, Ls.9–19.)

The district court later sentenced Ms. Estrada to concurrent sentences of two years fixed and five years indeterminate, but suspended her sentences and placed her on two years of probation. (R., pp.203–10.) Ms. Estrada timely appealed. (R., pp.211–16.)

## ISSUES

- I. Did the district court err and abuse its discretion by allowing the State to introduce irrelevant, unfairly prejudicial, and confusing evidence that Ms. Estrada was fired from Safe Passage?
  
- II. Did the district court err by allowing the State to introduce irrelevant evidence that Safe Passage modified its housing funding request policies in response to this alleged incident?

## ARGUMENT

### I.

#### The District Court Erred And Abused Its Discretion By Allowing The State To Introduce Irrelevant, Unfairly Prejudicial, And Confusing Evidence That Ms. Estrada Was Fired From Safe Passage

##### A. Factual Background

Ms. Estrada filed a motion in limine before trial which asked that the district court exclude evidence of Ms. Estrada’s work performance at Safe Passage, including evidence that she was fired from Safe Passage. (R., pp.98–99.)

The State objected to that motion, explaining that it intended to introduce evidence that Ms. Estrada was fired for work-related performance issues. (Tr., p.57, Ls.8–11.) The State argued that the evidence was relevant because “after Ms. Estrada was terminated that was when Ms. Wheeler, went through and started going through the desk to start organizing some of the paperwork and found the doctored paperwork that started this whole investigation.” (Tr., p.57, Ls.12–16.) In response to the court’s question of how it would prejudice the State’s ability to present its case if it could not tell the jury that Ms. Estrada was fired, the State responded that “it’s important for the jury to understand that there was a reason Ms. Wheeler was going through her desk” because it wouldn’t “want the jury to assume that a supervisor was doing anything untoward.” (Tr., p.58, Ls.5–9.) The State agreed it did not need to discuss the reason why Ms. Estrada was let go. (Tr., p.58, Ls.10–12.)

Ms. Estrada countered that Ms. Estrada’s termination—which happened after the alleged conduct at issue and was entirely unrelated—was not relevant and was highly prejudicial. (Tr., p.58, L.21–p.59, L.3.) Ms. Estrada astutely observed:

I think the State can certainly present their case without going into that. *I think it’s fair enough that she no longer works there, that certainly explains why*



*someone is going through her desk looking at her paperwork, but I certainly don't think we need to put this into the jury's head. I think it leads to confusion. They may think it's related to the conduct that's alleged in this case, and that basically kind of wipes out her presumption of innocence with that type of prejudice.*

(Tr., p.59, Ls.4–13 (emphasis added).) Finally, Ms. Estrada argued that, had the State given notice of its intent to introduce this evidence under Idaho Rule of Evidence 404(b), “they wouldn’t be able to meet the criteria for that being relevant and then going on to support a permissible use for that under 404(b).” (Tr., p.59, Ls.14–20.)

The district court concluded that it would allow the State to present evidence that Safe Passage had fired Ms. Estrada, but it would not allow the State to get into the underlying reasons for firing her. (Tr., p.59, L.22–p.61, L.5.) At trial, the State told the jury that Ms. Estrada had been terminated in its opening argument, and two of Ms. Estrada’s superiors at Safe Passage testified as much. (Tr., p.152, Ls.5–9, p.215, Ls.23–25, p.296, L.15–p.270, L.2.)

B. Applicable Law

Only relevant evidence, or evidence tending to make a fact of consequence to the action more or less likely, is admissible. I.R.E. 401, 402. Similarly, evidence of other crimes, wrongs, or acts is not admissible to show a defendant’s criminal propensity. I.R.E. 404(b). “It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *State v. Johnson*, 148 Idaho 664, 667 (2010); I.R.E. 404(b). “[E]vidence of a person’s actions or conduct, other than that set forth as an ultimate issue for trial, is generally inadmissible under I.R.E. 404(b).” *State v. Medrano*, 123 Idaho 114, 119 (Ct. App. 1992) (quoting *State v. Rodriguez*, 118 Idaho 948, 950 (Ct. App. 1990)).

The court may exclude even relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” I.R.E. 403. “Evidence is unfairly prejudicial when it suggests decision on an improper basis.” *State v. Fordyce*, 151 Idaho 868, 870 (Ct. App. 2011).

This Court reviews whether evidence is relevant de novo, while it reviews the determination of whether evidence is unduly prejudicial for an abuse of discretion. *State v. Ehrlick*, 158 Idaho 900, 907 (2015). A district court acts within its discretion if it: “(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.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

### C. Analysis

Evidence that Ms. Estrada was fired from Safe Passage was irrelevant, unfairly prejudicial, and confusing, and thus the district court erred and abused its discretion by admitting it. To begin, evidence that Ms. Estrada was fired did not make any fact of consequence to the charges of forgery and grand theft more or less likely, and was thus irrelevant and inadmissible. *See* I.R.E. 401, 402; I.C. § 18-3601; I.C. § 18-2403; I.C. § 18-2407(1)(b)(3). To the extent that the State needed to give an explanation for Ms. Wheeler going through Ms. Estrada’s desk, it could have simply presented evidence that Ms. Estrada no longer worked at Safe Passage, as pointed out by defense counsel below. (*See* Tr., p.59, Ls.4–13.) Indeed, the State’s own explanation for needing to tell the jury that Ms. Estrada was fired—to head off any assumption that Ms. Wheeler was doing something “untoward”—is fully satisfied by telling the jury that Ms. Estrada no longer worked at Safe Passage, while also telling the jury that Ms. Estrada was

fired in no way addresses the State’s purported concern. (*See* Tr., p.58, Ls.5–9.) The only possible purpose for introducing evidence that Ms. Estrada was fired is to show that she is a bad person, which is both irrelevant under Rule 402 and specifically barred by Rule 404(b). Relatedly, even if this evidence had some miniscule probative value, it was substantially outweighed by the danger of unfair prejudice and confusion of the issues. *See* I.R.E. 403. The district court therefore erred and abused its discretion by admitting evidence that Ms. Estrada had been fired from Safe Passage.

## II.

### The District Court Abused Its Discretion By Allowing The State To Introduce Irrelevant Evidence That Safe Passages Modified Its Housing Funding Request Policies In Response To This Alleged Incident

#### A. Factual Background

The State asked the executive director of Safe Passage, Ms. Lieske, “[w]hen this was discovered back in June of 2018 [referring to Ms. Estrada’s alleged crimes], did Safe Passage seek to revamp their housing assistance request program?” (Tr., p.329, Ls.20–22.) Defense counsel objected, arguing that evidence of subsequent remedial measures was not admissible. (Tr., p.329, Ls.23–25.) The court overruled that objection, and Ms. Lieske testified that they did. (Tr., p.330, Ls.1–2.)

When the State asked the follow-up question of what type of changes were made, defense counsel again objected on the same basis. (Tr., p.330, Ls.3–7.) In response to the court’s request for which rule of evidence that counsel was relying on, Ms. Estrada cited Idaho Rule of Evidence 407. (Tr., p.330, Ls.8–12.) The State responded, “I don’t believe that 407 applies in this matter. This indicates that ‘Evidence of subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product or its design, or a need for a warning or instruction.’ I

don't believe that any of those apply here, and so I don't believe 407 is applicable." (Tr., p.330, Ls.15–21.) The court sustained the objection "on the basis that it's not relevant what happened after the fact." (Tr., p.330, Ls.23–25.)

B. Applicable Law

According to Idaho Rule of Evidence 407,

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

Rule 407 is a rule of relevance, *see* Idaho Rules of Evidence Article IV (titled "Relevancy and Its Limits"); *State v. Guzman*, 122 Idaho 981, 994 (1992) (citing Rule 407 as an example of how "the rules of evidence also limit or forbid the admission of what some might consider relevant evidence for public policy reasons"), and thus this Court reviews *de novo* whether evidence is admissible under that rule, *see Ehrlick*, 158 Idaho at 907.

C. Analysis

The district court erred by admitting evidence that Safe Passage had modified its housing funding request policies after the alleged incident in this case. Subsequent remedial measures are not admissible to prove culpability, but that is precisely what the State sought to prove by introducing evidence of its subsequent remedial measures. *See* I.R.E. 407; Tr., p.329, Ls.20–25. Further, in sustaining Ms. Estrada's objection to the follow-up question of what those remedial

measures were, the district court recognized that evidence was not relevant because it happened after the alleged incident. (Tr., p.330, Ls.23–25.) What the court apparently failed to recognize is that Rule 407 is itself a rule of relevance, and that the district court’s explanation for sustaining the second objection applies equally to Ms. Estrada’s first objection. *See* Idaho Rules of Evidence Article IV (titled “Relevancy and Its Limits”); Tr., p.330, Ls.3–25. The district court therefore erred by allowing the State to introduce evidence of Safe Passage’s subsequent remedial measures.

CONCLUSION

Ms. Estrada respectfully requests that this Court vacate her judgment of conviction and remand this case for a new trial.

DATED this 3<sup>rd</sup> day of April, 2020.

/s/ Maya P. Waldron  
MAYA P. WALDRON  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of April, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

Delivered via e-mail:

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