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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 47389-2019**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR28-18-15045**
	)	
MELLISA ANN ESTRADA,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Mellisa Ann Estrada appeals from her convictions for forgery and grand theft following a jury trial.

Statement Of Facts And Course Of Proceedings

The following facts are taken from testimony presented at trial. In June 2018, Detective Jacob Pleger of the Coeur d'Alene Police Department received a report of a forgery from employees of Safe Passage, a non-profit organization which provides grants of money for housing and rental assistance to survivors of domestic violence and sexual assault. (Tr., p.174, Ls.8-24; p.199, L.24 – p.200, L.4.) The detective spoke to the executive director, Chauntelle Lieske, and the office manager, Patricia Wheeler. (Tr., p.174, L.25 – p.175, L.15.) On July 9, 2018, Detective Pleger talked to Estrada at her residence, and she said that she had used Safe Passage funds to pay for her own rent without permission. (Tr., p.178, L.23 – p.179, L.3; p.183, Ls.4-12; p.195, Ls.9-14.)

In March 2018, Estrada had been the Housing Advocate for Safe Passage for just over one year and Ms. Wheeler was her direct supervisor during that time. (Tr., p.203, Ls.6-8, 13-15.) The procedures at Safe Passage were explained by Ms. Wheeler. After meeting with a client requesting housing assistance, Estrada would discuss the request with Ms. Wheeler, often with a form Estrada filled out for housing assistance funds. (Tr., p.202, L.12 – p. 203, L.24; p.294, Ls.7–20.) Other information was supposed to accompany the housing assistance request form, "[u]sually a lease or an eviction notice or a pay vacate order or something like that. Sometimes they would come to [Ms. Wheeler] with – that those are on the way, so the client was going to be bringing them in at some point at a later time." (Tr., p.204, Ls.11-16.)

If a housing assistance request was approved, Ms. Wheeler would sign it and take it to the finance director, Mac Rebmann, to "cut a check" – always to the vendor, not the client – but he did not sign it. (Tr., p.203, L.24 – p.204, L.3; p.206, Ls.17-19; p.207, Ls.9-18; p.294, L.24 – p.295, L.10.) The checks were then signed by Ms. Lieske, but if the amount was more than $300, the checks had to have a second signature from a "board person." (Tr., p.206, L.17 – p.207, L.2; p.296, Ls.3-13.)

Neither Ms. Wheeler nor Ms. Lieske ever gave Estrada permission to pay her rent from Safe Passage funds, nor were they authorized to do so. (Tr., p.250, Ls.11-16; p.306, Ls.9-18.) Estrada was terminated from her employment with Safe Passage in June 2018 for reasons unrelated to this case, and Ms. Wheeler was given the task of going through her desk. (Tr., p.215, L.23 – p.216, L.8; p.296, L.25 – p.297, L.7.) In the desk drawers, Ms. Wheeler found client files and loose documents outside of files that could not be matched with anything. (Tr., p.216, L.9 – p.217, L.8.) Among them were:

> State Exhibit 1: a Residential Lease Agreement in the name of "Active Property Management." (Tr., p.158, L.24 – p.159, L.8; p.217, L.12 – p.218, L.3; p.298, Ls.3-17.)
>
> State Exhibit 2: a property management lease with "Vista Property Management" written on the top. (Tr., p.218, L.16 – p.219, L.8.) It is evident that the "Vista Property Management" heading was inserted by "a cut out piece of paper taped onto the document." (Tr., p.159, L.22 – p.160, L.7; p.227, Ls.16-23; p.297, Ls.8-22; p.298, L.18 – p.299, L.1.)
>
> State Exhibit 3: a photocopy of State Exhibit 2. (Tr., p.160, Ls.15-22; p.219, L.18 – p.220, L.11.) State Exhibit 3 is also a photocopy of most of State Exhibit 1, but it (St. Ex. 3) appears to have had its heading altered. (Tr., p.227, L.24 – p.228, L.6.)
>
> State Exhibit 4: a Three-Day Notice to Pay or Quit, which had the renter's name altered by either taping over or using correction tape to put a different name at the top – [N.M.].[1] (Tr., p.228, L.7 – p.229, L.8; p.300, L.3 – p.301, L.3.) The Three-

[1] Because the name of Safe Passage's client was ordered to remain confidential during the trial, the same requirement will be followed here. (Tr., p.230, Ls.16-22.)

Day Notice was the type of documentation that served to support a request for housing assistance. (Tr., p.228, Ls.9-18.)

When Ms. Wheeler found the above documents in Estrada's desk, she tried, but could not, pair the documents up with any existing file, so she took them to Ms. Lieske. (Tr., p.230, L.25 – p.231, L.4.) The two women took the documents to Mac Rebmann, the finance director for Safe Passage, and he ran a QuickBooks report to find all the checks written for housing rental assistance, which showed two checks were issued by Safe Passage for client services on March 8, 2018, one for $200 and one for $450. (Tr., p.231, L.5 – p.232, L.3; p.240, Ls.5-21; St. Ex. 12.) Based in part on that report, Ms. Wheeler made an Excel Spreadsheet which similarly showed the same two checks had been issued to Vista Property Management ("Vista") on March 8, 2018. (Tr., p.243, L.8 – p.244, L.9.)

The two checks were issued in response to two Housing Financial Assistance Request Forms (St. Exs. 5 and 9), for $200 and $450 (respectively) dated March 7, 2018, and signed by Estrada and Ms. Wheeler; the payee on each check was Vista and the client identification numbers corresponded to existing Safe Passage clients.[2] (Tr., p.244, L.21 – p.245, L.12; p.267, L.21 – p.270, L.17; p.302, L.11 – p.305, L.14; St. Ex. 8.) The two financial assistance request forms (St. Exs. 5 and 9) were in Estrada's handwriting[3] and were presented to Ms. Wheeler by Estrada. (Tr., p.208, L.16 – p.215, L.18.)

Safe Passage maintained a physical file and a file in the "ALICE" system to track each client. (Tr., p.245, Ls.13-19.) Reports generated through the ALICE system (St. Exs. 6 and 10)

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[2] The names of Safe Passage clients are not on housing assistance request forms; instead, unique identification numbers were assigned to clients through a system to protect the clients' confidentiality. (Tr., p.204, L.23 – p.205, L.12.)

[3] A sticky note stating that more documentation was forthcoming was attached to State Exhibit 9, which was also in Estrada's handwriting. (Tr., p.211, Ls.13–18; p.212, L.24 – p.213, L.3.)

were prepared for each of the clients associated with the two housing assistance requests (St. Exs. 5 and 9), and those reports showed that, although the clients existed, neither had requested housing assistance, nor had they utilized Vista for rental purposes. (See generally Tr., p.245, L.20 – p.250, L.1.)

On March 7, 2018, Estrada was behind on her rent, and Jill White, office manager for Vista (through which Estrada rented her home), posted a Three-Day Notice to Pay or Quit on the door of Estrada's residence.[4] (Tr., p.348, L.1 – p.349, L.17; p.351, L.17 – p.352, L.13; p.368, Ls.12-17; St. Exs. 14, 15.) Estrada sent an e-mail to Ms. White on March 12, 2018, stating in part:

> I got the 3 day notice. We are waiting on a board member to sign checks, our payroll person was let go and they didn't prepare enough in advance to have check as well as reimbursement for travel taken care of. I asked that my reimbursement checks be made directly to Vista property to skip the wait for it to clear. This month's rent will be paid in full by friday.

(St. Ex. 17; see Tr., p.357, Ls.5-22; p.360, Ls.8-19.) On March 19, 2018, Estrada again sent an e-mail to Ms. White, this time informing her that "[t]wo checks should have been either mailed or taken there by friday." (St. Ex. 18; see Tr., p.358, L.12 – p.359, L.1, p. 360, Ls.20-23.) On May 14, 2018, Estrada e-mailed a message to Ms. White asking, "[c]an u please let me know the total amount you received from Sage Passage because it should have been 650.00." (St. Ex. 19; see Tr., 359, Ls.10-24; p.360, L.24 – p.361, L.3.)

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[4] The Three-Day Notice (St. Ex. 15) appears to have been used to create the Three-Day Notice (St. Ex. 4) found in Estrada's desk after she was fired – with the exception that the renter's name had been changed to N.M. (Tr., p.228, L.7 – p.229, L.19; p.300, L.3 – p.301, L.3.) The name of N.M. on the Three-Day Notice found in Estrada's desk (St. Ex. 4) corresponded with the client identification number of either State Exhibit 5 or State Exhibit 9 – the two housing assistance request forms leading to the issuance of checks for $200 and $450 to Vista Property Management. (Tr., p.244, L.21 – p.245, L.12; p.264, Ls.4-12; p.267, L.21 – p.270, L.17; p.302, L.11 – p.305, L.14; St. Ex. 8.) In sum, Estrada appears to have prepared a falsified Three-Day Notice (St. Ex. 4) from her own Three-Day Notice (St. Ex. 15) to support one of those requests.

According to Ms. White and Teresa Dawson, the latter of whom did bookkeeping and accounting for Vista in March 2018, Estrada's "tenant ledger" showed that after the Three-Day Notice was delivered to her on March 7, 2018, Vista received two checks from Safe Passage ($200 and $450) that were deposited into its account on March 19, 2018, and credited to Estrada's tenant ledger. (Tr., p.348, L.1 – p.349, L.17; p.361, L.15 – p.363, L.6; p.366, Ls.14-22; p.368, L.18-21; p.369, L.7 – p.370, L.6; Tr., p.372, L.1 – p.373, L.2.).) Ms. Dawson explained that it was unusual for Vista to receive checks directly from Safe Passage for rent payment – it had not happened before. (Tr., p.370, Ls.7-11.)

The state charged Estrada with forgery and grand theft of a financial instrument (R., pp.134-135), and a jury convicted her of both offenses (R., p.152; Tr., p.417, Ls.12-17.) The district court sentenced Estrada to identical concurrent sentences of five years, with two years fixed, all suspended, and placed her on supervised probation for two years. (R., pp.203-206.) Estrada filed a Rule 35(b) motion for reduction of sentence, which was denied. (R., pp.238-240, 253-254.) Estrada filed a timely notice of appeal. (R., pp.211-216, 229-235.)

ISSUES

Estrada states the issues on appeal as:

1. 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?

2. Did the district court err by allowing the State to introduce irrelevant evidence that Safe Passage modified its housing finding request policies in response to this alleged incident?

(Appellant's brief, p.3.)

The state rephrases the issues on appeal as:

1. Has Estrada failed to show that the district court abused its discretion in permitting testimony that she had been fired by Safe Passage?

2. Has Estrada failed to show that the district court abused its discretion by allowing testimony that Safe Passage modified its procedures in response to her offenses?

ARGUMENT

I.
Estrada Has Failed To Show That The District Court Abused Its Discretion In Permitting Testimony That She Had Been Fired By Safe Passage

A. Introduction

Prior to trial, Estrada filed a motion in limine requesting, in part, the exclusion of "[a]ll evidence regarding [her] work performance while employed by Safe Passage based on I.R.E.401-404[.]" (R., pp.98-99.) At a hearing on that motion, the district court ruled that the state could present testimony that Safe Passage severed its relationship with Estrada (but not the reasons for it) in order to explain to the jury why, after the termination, a supervisor searched Estrada's desk and found documents and papers which implicated Estrada in criminality. (Tr., p.59, L.22 – p.61, L.5.)

On appeal, Estrada contends that "[e]vidence that [she] was fired from Safe Passage was irrelevant, unfairly prejudicial, and confusing, and thus the district court erred and abused its discretion by admitting it." (Appellant's brief, p.6.) However, a review of the record reveals that the district court properly permitted the state to present testimony that Estrada was terminated from her job with Safe Passage.

B. Standard Of Review

"This Court reviews challenges to a trial court's evidentiary rulings under the abuse of discretion standard." Perry v. Magic Valley Reg'l Med. Ctr., 134 Idaho 46, 50, 995 P.2d 816, 820 (2000). "Trial courts maintain broad discretion in admitting and excluding evidence." State v. Weigle, 165 Idaho 482, 487, 447 P.3d 930, 935 (2019).

An exception to this broad discretion is relevance, which is "a matter of law that is subject to free review." State v. Hall, 163 Idaho 744, 774, 419 P.3d 1042, 1072 (2018). Evidence is

relevant if it has "any tendency" to make a fact "of consequence in determining the action," "more or less probable." I.R.E. 401. "Whether a fact is 'of consequence' or material is determined by its relationship to the legal theories presented by the parties." State v. Garcia, ___ Idaho ___, ___ P.3d ___, No. 46253, 2020 WL 2029266, at *4 (Idaho Apr. 28, 2020) (quotation marks omitted). "Even relevant evidence may be excluded by the district court if 'its probative value is substantially outweighed by a danger of . . . unfair prejudice[.]'" Id. (brackets original, quoting I.R.E. 403). "A lower court's determination under I.R.E. 403 will not be disturbed on appeal unless it is shown to be an abuse of discretion." State v. Hernandez, 163 Idaho 9, 16, 407 P.3d 596, 603 (Ct. App. 2017).

C. The District Court Did Not Abuse Its Discretion By Admitting Testimony That Estrada Was Fired By Safe Passage

At the hearing on Estrada's motion in limine, the state contended that "[t]he reason [Estrada's firing] is relevant is because when – after [she] 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.11-16.) Estrada requested an order excluding such testimony, arguing that her firing was not relevant, nor would it have been admissible under I.R.E. 404(b). (Tr., p.58, L.21 – p.59, L.20.) Responding immediately to Estrada's Rule 404(b) argument, but without specifically mentioning the rule, the district court stated:

> All right. Thank you.
>
> I'm going to rule *on the issue at this point*. It's discretionary with the Court as to the introduction of evidence or exclusion of evidence. And I recognize that discretion. I'm going to allow the State to present evidence that they had severed their relationship.

> The business entity for which Ms. Estrada had been working had severed their relationship with Ms. Estrada *which led to the discovery of the evidence that the State believes will support the charges*, but without reference to the purpose for the severance of that relationship or the reason underlying it.
>
> And I think it has to be made clear, and I will do this by limiting instruction to the jury or the State can present evidence of this, that the severance of the relationship was unconnected with the evidence that was eventually found; it was for some other independent and unrelated reason.
>
> And so that will be order of the Court on that particular issue.

(Trial Tr., p.59, L.21 – p.60, L.16 (emphasis added).)

Later, after further discussion about its ruling, the court explained:

> I'm not going to prescribe the words that they use, but terminate is such an unpleasant phrase, but that's why I used severed from their relationship. The State can put on the evidence they believe appropriate, but just not the reason for that termination, and the fact that it was unrelated to the charges alleged here.

(Trial Tr., p.60, L.24 – p.61, L.5.)

The state was concerned that Ms. Wheeler's actions would be seen by the jury as an invasion of Estrada's personal items from her desk. The district court acknowledged its discretion and decided that the state was entitled to explain to the jury why Ms. Wheeler was going through Estrada's desk after Estrada was fired, but not to reveal the reasons for her firing. In a similar analysis, the Idaho Supreme Court recently held that, under I.R.E. 404(b), testimony that the defendant was on probation was relevant to explain to the jury why officers searched his underwear, stating:

> In the present case, the district court admitted the probation evidence, not for a propensity purpose, but to provide context for the search. We agree that the probation evidence was relevant for the non-propensity purpose of explaining the police officers' actions. Like in [*State v. Yakovac*, 145 Idaho 437, 180 P.3d 476 (2008)], where evidence of an outstanding arrest warrant was relevant to explaining why police officers searched the defendant's vehicle, here, evidence that Jones was on probation is relevant to explaining why the police officers searched his underwear.

State v. Jones, ___ Idaho ___, ___ P.3d ___, 2020 WL 2111375, *5 (May 4, 2020) (not released for publication in permanent law reports; subject to revision). Noting that one of the ways the district court attempted to limit any prejudice was by directing the state to not reveal the crime Jones had been convicted of, the Idaho Supreme Court concluded, "the district court did not abuse its discretion in determining that the probative value of the probation evidence was not substantially outweighed by the danger of unfair prejudice." Id. at *7.

The disputed testimony in both Jones and in Estrada's trial was relevant in explaining why searches were properly conducted, leading to the seizure of incriminating evidence. Similar to the attempt in Jones to limit prejudice by precluding testimony about what crime Jones was convicted of, the district court in Estrada's case tried to limit prejudice by excluding testimony regarding the specific grounds for her firing. Further, the evidence of Estrada's firing is certainly less potentially prejudicial than the evidence that revealed Jones was on probation obviously because he had been convicted of a crime. As in Jones, this Court should affirm the district court's ruling that testimony explaining why the search of Estrada's desk at Safe Passage was relevant and not unfairly prejudicial.

Finally, although Estrada maintains on appeal, as she did below, that the state "could have simply presented evidence that [she] no longer worked at Safe Passage" (Appellant's brief, p.6), that would not explain why the incriminating documents were still in Estrada's desk. If Estrada had quit her job on her own terms, it would have been unlikely that she would have left incriminating documents in her desk. However, being fired from her job indicates that her departure may have been abrupt enough to explain why those documents were still there. By stating that Estrada's firing "led to the discovery of the evidence that the state believes will support the charges" (Tr., p.60, Ls.3-8), it is reasonable to infer that the court concluded her firing was

relevant not only to explain why Ms. Wheeler was entitled to go through Estrada's desk, but also to explain why the incriminating documents were still in her desk. This Court should conclude, under free review, that evidence of Estrada's firing was relevant in both those ways. See Hall, 163 Idaho at 774, 419 P.3d at 1072; I.R.E. 401. Estrada has failed to show any error, or an abuse of discretion, in the district court's ruling.

D. Any Error Was Harmless

Even if there was error, the error was harmless. Under I.C.R. 52 "if there is an incorrect ruling regarding evidence, this Court will grant relief on appeal only if the error affects a substantial right of one of the parties." State v. Joy, 155 Idaho 1, 6, 304 P.3d 276, 281 (2013) (quotation omitted). See also State v. Watkins, 148 Idaho 418, 420, 224 P.3d 485, 487 (2009). "To establish harmless error, the State must prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Svelmoe, 160 Idaho 327, 335, 372 P.3d 382, 390 (2016) (quotation marks omitted). Even if the district court erred in permitting testimony informing the jury that Estrada had been fired by Safe Passage, such testimony would not have affected her substantial rights.

The testimony and evidence presented at trial, as set forth in the Statement of Facts section of this brief and relied upon here, shows that any error by the district court evidentiary ruling did not contribute to the verdict or affect Estrada's substantial rights. With regard to forgery, the state was required to prove that Estrada, "*with the intent to defraud another; falsely altered, forged or counterfeited a contract*; and/or [] did pass or attempt to pass as true and genuine a false, altered, forged, or counterfeited contract knowing the same to be false, altered, forged, or counterfeited, with the intent to prejudice, damage, or defraud any person. . . ." (R., p.166 (emphasis added).) Although Estrada apparently never presented the forged lease to Safe Passage employees, the

forged lease – altered to read "Vista Property Management" (St. Exs. 2 and 3) instead of "Active Property Management" (St. Ex. 1) – was prepared by Estrada in the event she needed to support her phony financial assistance requests to Safe Passage to pay her past-due rent. As the prosecutor told the jury:

> And then we have Exhibit No. 9, which is the housing request for the $450. And note the sticky note that's on there that Patty testified was in Mellisa's handwriting. That sticky note specifically says that the client understands that there is further documentation that needs to be brought. I believe the exact verbiage, "Client knows to bring copy of lease once signed."
>
> So Mellisa knew she needed to have supporting documentation at the ready in case someone started asking more questions. That is why she forged those lease agreements.

(Tr., p.409, Ls.11-22; see Tr., p.413, L.21 – p.414, L.6.) The evidentiary ruling by the district court regarding Estrada's firing from Safe Passage did not contribute to her forgery conviction.

Similarly, any error by the district court's ruling did not contribute to Estrada's grand theft conviction. The jury was instructed that, to convict Estrada of that offense, it had to find beyond a reasonable doubt that she "wrongfully took, obtained or withheld property described as a check and/or checks with the numbers 16051 and/or 16052 from an owner, with the intent to deprive an owner of the property or to appropriate the property, and the property was a check, draft, or order for the payment of money upon any bank." (R., p.169.) The testimony presented at trial shows that Estrada obtained two checks, for $200 and $450, from Safe Passage through wrongful acts, such as preparing housing assistance requests in the name of clients who never made such requests, and having the funds directed to Vista to pay her own rent – without any authorization from Safe Passage to do so. Given such clear evidence of Estrada's guilt for grand theft, the district court's admission of her "termination" from Safe Passage could not have contributed to her conviction.

Estrada contends that the "only possible purpose for introducing evidence that [she] was fired was to show that she is a bad person." (Appellant's brief, p.7.) There is no support for the notion that being fired from a job shows that a person is "bad." If everyone ever fired from a job was deemed a "bad person," there would be very few "good persons" left in society. The jury knew that Estrada's termination occurred in June 2018, and that Safe Passage discovered the incriminating documents that were in her desk after that occurred. (Tr., p.296, L.25 – p.297, L.14.) Therefore, the jury knew that Estrada's termination had nothing to do with her current offenses.[5] Assuming the jury believed Estrada was not a good employee, it would not have been reasonable for it to conclude, based on that belief, that she was also guilty of forgery and grand theft.

II.
Estrada Has Failed To Show That The District Court Abused Its Discretion By Allowing Testimony That Safe Passage Modified Its Procedures In Response To Her Offenses

A. Introduction

During trial, Estrada's counsel objected when the prosecutor asked Chauntelle Lieske whether Safe Passage changed its procedure for housing assistance requests after Estrada's crimes were discovered. The colloquy went as follows:

> [PROSECUTOR]: Q. So, Ms. Lieske, you indicated that it's a different process now than it was back in March of 2018. When this was discovered back in June of 2018, did Safe Passage seek to revamp their housing assistance request program?
>
> [DEFENSE COUNSEL]: Judge, objection *under rule of evidence regarding remedial measures. I think it's not admissible.*
>
> THE COURT: Overruled on *those* grounds.

[5] Although the district court said it would issue a "limiting instruction to the jury or the State can present evidence of this, that the severance of the relationship was unconnected with the evidence that was eventually found" (Tr., p.60, Ls.3-14), neither action took place. Instead, the prosecutor told the jury during opening statement, "[Ms. Wheeler will] tell you about these specific request forms, and she will tell you that she discovered these issues because in mid-June 2018, Ms. Estrada's employment with Safe Passage was terminated on other grounds." (Tr., p.152, Ls.4-8.)

THE WITNESS: Yes, we did.

[PROSECUTOR]: Q. And what type of changes were made?

(DEFENSE COUNSEL]: Judge, I'm going to object again on the same basis. I know under the rules of evidence that type of evidence is not permitted. Thank you.

THE COURT: *Which rule of evidence are you referring to, please?*

[DEFENSE COUNSEL]: I'll look that up. I know it's in the four hundreds, your Honor, I apologize. *I think it's 407*, your Honor.

THE COURT: What's the response from the State?

[PROSECUTOR]: Your Honor, 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. Thank you.

THE COURT: I'm going to sustain the objection. And I'm going to sustain it on the basis that it's not relevant what happened after the fact.

(Tr., p.329, L.18 – p.330, L.25 (emphasis added).)

On appeal, Estrada contends "[t]he district court erred by admitting evidence that Safe Passage had modified its housing funding request policies after the alleged incident in this case[,]" and, "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. 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." (Appellant's brief, pp.8-9.)

Estrada's argument fails because it has not been preserved for appeal and she has failed to show any abuse of discretion in the district court's overruling of defense counsel's objection. Additionally, any error in the district court's ruling is harmless.

B. Standard Of Review

The general rule in Idaho is that an appellate court will not consider an alleged error on appeal in the absence of a timely objection at trial. State v. Norton, 151 Idaho 176, 181, 254 P.3d 77, 82 (Ct. App. 2011); State v. Thompson, 132 Idaho 628, 634, 977 P.2d 890, 896 (1999). Further, "[f]or an objection to be preserved for appellate review, the specific ground for the objection must be clearly stated." State v. Norton, 134 Idaho 875, 880, 11 P.3d 494, 499 (Ct. App. 2000) (citing I.R.E. 103(a)(1); State v. Gleason, 130 Idaho 586, 592, 944 P.2d 721, 727 (Ct. App. 1997)). "Objecting to the admission of evidence on one basis does not preserve a separate and different basis for exclusion of the evidence." Id. (citing State v. Higgins, 122 Idaho 590, 596, 836 P.2d 536, 542 (1992); Gleason, 130 Idaho at 592, 944 P.2d at 727).

On appeal, the Court "reviews questions of admissibility of evidence using a mixed standard of review." State v. Stevens, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008). Whether evidence is relevant is a question of law reviewed de novo, but whether the evidence is subject to exclusion under I.R.E. 403 is reviewed for an abuse of discretion. Id. 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. Estrada's Challenge To The District Court's Evidentiary Ruling Has Not Been Preserved For Appeal; Regardless, The Court Correctly Overruled Her Objection

Estrada's argument misses the essence of the district court's ruling. Her trial counsel's objection to the question of whether any remedial measures were taken was overruled because it lacked specificity. Therefore, the district court's ruling is not subject to review and, for the same reasons, its ruling did not constitute an abuse of discretion.[6]

Citing I.R.E. 103(a)(1)(B),[7] the Idaho Supreme Court recently explained:

> [W]hile a party may challenge the sufficiency of the evidence (i.e. the quantum of evidence) for the first time on appeal, this Court has long required objections to the admissibility of evidence to be raised below. *Id.* To preserve an evidentiary objection for appellate review, "either the specific ground for the objection must be clearly stated, or the basis of the objection must be apparent from the context." *State v. Almaraz*, 154 Idaho 584, 602, 301 P.3d 242, 260 (2013) (quoting *State v. Sheahan*, 139 Idaho 267, 277, 77 P.3d 956, 966 (2003)); I.R.E. 103(a)(1)(B).

State v. Hess, ___ Idaho ___, 462 P.3d 1171, ___ (2020).

Defense counsel's objection was vague, stating, "Judge, objection under rule of evidence regarding remedial measures. I think it's not admissible." (Tr., p.329, Ls.23-25.) Recognizing

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[6] Whether the issue is preserved for appeal, and whether the district court erred in its ruling, are both dependent upon whether Estrada's objection stated a "specific ground" or "it was apparent from the context[.]" I.R.E. 103(a)(1)(B). Therefore, the following argument applies to both issues.

[7] Rule 103, I.R.E., states in relevant part:

> (a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:
>
> (1) if the ruling admits evidence, a party, on the record:
>
> (A) timely objects or moves to strike; and
>
> (B) *states the specific ground, unless it was apparent from the context*; . . .

(Emphasis added.)

the lack of specificity of counsel's objection, the court responded, "[o]verruled on *those* grounds." (Tr., p.330, L.1 (emphasis added).) As an indication that the district court's evidentiary ruling was based on the vagueness of the objection,[8] when next confronted with an objection to the question of what particular measures had been taken, the court asked, "[w]hich rule of evidence are you referring to, please?" (Tr., p.330, Ls.8-9.) Counsel responded, "I'll look that up. I know it's in the four hundreds, your Honor . . . . I think it's 407, your Honor."[9] (Tr., p.330, Ls.10-12.) After the prosecutor read Rule 407 to the court, the court sustained the objection on different grounds, ruling, "it's not relevant what happened after the fact." (Tr., p.330, Ls.24-25.)

In short, the difference between the two evidentiary rulings on defense counsel's objections is that the first objection was not specific (nor its basis clear from the context), while the second objection was. Moreover, the district court's ultimate ruling was based on relevance, not the inadmissibility of remedial measures. Rather than the court's second ruling serving as proof that its first ruling was incorrect, the court's comments reveal that, had a proper objection been made to the first question (i.e., relevance), it too might have been sustained. Therefore, because Estrada

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[8] Earlier in the trial, the district court took issue with defense counsel's objections, explaining:

> . . . I don't want to be overly picky here, but an objection for lack of foundation is not an objection. There's a foundation for relevance, a foundation for authenticity, a foundation for personal knowledge. So I need to know more of what the defense's objection is as opposed to foundation.

(Tr., p.233, L.25 – p.244, L.6.)

[9] Rule 407 of the Idaho Rules of Evidence reads in relevant part:

> 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; . . . .

did not make a proper objection to the district court's first ruling, a challenge to that ruling cannot be reviewed and he has failed to demonstrate any abuse of discretion in the district court's ruling.

D. Any Error Was Harmless

Even when the trial court has abused its discretion, such "abuse of discretion may be deemed harmless if a substantial right is not affected." State v. Shackelford, 150 Idaho 355, 363, 247 P.3d 582, 590 (2010); I.C.R. 52 ("Any error, defect, irregularity or variance that does not affect substantial rights must be disregarded"). In this case, even if the district court erred in overruling defense counsel's objection to the question of whether any changes were made in Safe Passage's housing assistance application procedures after Estrada was fired, any such error was harmless.

That Safe Passage revamped its housing assistance request program after discovering Estrada's crimes in June 2018 was not injurious to her substantial rights. Chauntelle Lieske testified that, in March 2018, there were "holes" in the procedures at Safe Passage. (Tr., p.331, Ls.2-7.) Unlike a tort cases based on negligence of a party, in which defects (or holes) are directly at issue, the existence of holes in Safe Passage's procedures was neither disputed nor at issue in Estrada's jury trial. Whether those holes were corrected after Estrada was fired was not unfairly prejudicial because it did not suggest Estrada should be convicted on an improper basis.

Next, Estrada's defense counsel "opened the door" for the prosecutor to ask whether any remedial measures had been taken. In questioning Patricia Wheeler about checks over $300 earmarked to those seeking housing assistance, defense counsel asked, "[a]nd when you say that, was it an amount that was above $300 that would require more than one signature?" (Tr., p.254, Ls.8-10.) Ms. Wheeler replied, "At that time that was the policy." (Tr., p.254, L.11.) Defense counsel then asked, "Okay. *Has that changed*?" and Ms. Wheeler replied, "I don't know. You'd have to clarify that with Chauntelle." (Tr., p.254, Ls.12-14 (emphasis added).) In her cross-

examination of Chauntelle Lieske, defense counsel asked, "Did anybody from VOCA encourage you to update your practices in 2018?" (Tr., p.324, Ls.23-24.) Ms. Lieske answered, "No." (Tr., p.324, L.25.) In sum, defense counsel asked Ms. Wheeler whether a remedial measure had been taken for the required number of check signatures, and asked Ms. Lieske if VOCA had encouraged Safe Passage to update its practices in 2018. Defense counsel's choice to open the door to that subject area and present evidence of changes to Safe Passages procedures shows any error in the court's ruling on the prosecution's efforts to explore the same subject were ultimately harmless.

Finally, based on the testimony presented at trial as set forth in the Statement of Facts herein, and the state's harmless error argument presented in regard to Issue I herein, any error was necessarily harmless.

CONCLUSION

The state respectfully requests that this Court affirm Estrada's convictions for forgery and grand theft.

DATED this 24th day of June, 2020.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of June, 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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JCM/dd