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IN THE SUPREME COURT OF THE STATE OF IDAHO

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

REPLY BRIEF OF APPELLANT

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

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. She contends that during her jury trial, the district court made two erroneous evidentiary rulings. First, the court erred under in allowing the State to introduce irrelevant, unfairly prejudicial evidence—testimony that she was fired from her job (for reasons wholly unrelated to the circumstances underlying this case). Second, she argues the court erred in allowing the State to introduce evidence that her former employer took subsequent remedial measures, modifying its policies and procedures, in response to her alleged crimes.

The State presents a number of arguments relating to each issue on appeal. This Reply Brief addresses two of those arguments.

Statement of Facts and Course of Proceedings

The factual and procedural histories of this case were detailed in Ms. Estrada's Appellant's Brief and, therefore, are not repeated here.

ISSUES

- I. Did the district court err 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 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

Ms. Estrada contends the district court erred in denying her motion in limine seeking to exclude evidence that she was fired from Safe Passage. (App. Br., pp.4-7.) Specifically, she argues that testimony concerning her termination from Safe Passage—which preceded any allegations of criminality by Safe Passage, and was wholly unrelated to the crimes at issue in this case—was inadmissible under Idaho Rules of Evidence 401, 402, 403, and 404(b). (App. Br., pp.4-7.)

In response, the State argues evidence of Ms. Estrada’s firing was relevant, it was not unfairly prejudicial, and, even if the court erred, any such error was harmless. (*See* Resp. Br., pp.7-13.) In this Reply Brief, Ms. Estrada will address only the State’s relevance argument.

The State contends that evidence of Ms. Estrada’s unrelated firing was relevant because it explained *why* other Safe Passage employees cleaned out Ms. Estrada’s desk. (Resp. Br., pp.9-10.) In furtherance of this argument, the State cites *State v. Jones*, 167 Idaho 353, 470 P.3d 1162 (2020), for the proposition that context—why someone did something that led to the discovery of incriminating evidence—is necessarily relevant:

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.

....

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.

(Resp. Br., pp.9-10 (quoting *Jones*, 470 P.3d at 1169) (alteration original).)

The State’s reliance on *Jones*, however, is misplaced. The above quote is from the lead opinion in the case; however, that opinion was not the majority opinion insofar as it found context to be relevant, as that portion of the lead opinion only garnered two justices’ votes. *See Jones*, 470 P.3d at 1165-75 (indicating that only Justice Bevan fully concurred with Chief Justice Burdick’s lead opinion). Thus, the quoted language relied upon by the State does not represent the holding of the Court.

In fact, a majority of the justices in *Jones* explicitly rejected the proposition relied upon by the State in this case. *See id.* at 1175-76 (indicating the Justices Brody and Moeller fully concurred with Justice Stegner’s opinion).¹ The majority explained that “context,” *i.e.*, the reason *why* the officers conducted their search, was not relevant because those reasons were not “facts of consequence in determining this action.” *Id.* at 1175. The majority took the view that this context rationale was little more than a re-packaging of the *res gestae* doctrine, which the Court had rejected in *State v. Kralovec*, 161 Idaho 569 (2017). *Id.* at 1175-76. Thus, the majority reiterated that “contextual justifications like those offered in *Yakovac*,” and relied upon

¹ In Justices Stegner’s concurring opinion, he repeatedly described Chief Justice Burdick’s lead opinion as the “majority” opinion. *See Jones*, 470 P.3d at 1175-76. That may be an accurate descriptor in most respects, as Chief Justice Burdick’s opinion presumably garnered unanimous support as to its *other* holdings (although this is not explicit anywhere in either of the opinions). However, Chief Justice Burdick’s lead opinion cannot accurately be described as a “majority” opinion on the narrow question of whether “context” is relevant evidence.

by the lead opinion, “are inadmissible under the Idaho Rules of Evidence.” *Id.* at 1176. This was the true holding of *Jones*, and this holding supports Ms. Estrada’s position, not the State’s.²

The fact is that Ms. Estrada’s prior firing for unrelated reasons is completely irrelevant to whether she committed any crimes. *See* I.R.E. 201 (defining relevant evidence as that which “has any tendency to make a fact more or less probable than it would be without the evidence,” where that “fact is of consequence in determining the action”). Even if we assume that her firing provides a reason *why* Safe Passage employees cleaned out Ms. Estrada’s desk, under *Jones*, the reason itself is plainly irrelevant.

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

Ms. Estrada also contends the district court erred in overruling her objection to testimony concerning Safe Passages’ modification of its policies and procedures in response to her alleged crimes. (App. Br., pp.7-9.) She argues that, pursuant to Idaho Rule of Evidence 407, evidence of such subsequent remedial measures was inadmissible to prove her criminal liability. (App. Br., pp.7-9.)

In response, the State makes no effort to defend the district court’s ruling under Rule 407. (*See* Resp. Br., pp.13-19.) It argues only that Ms. Estrada’s argument was not preserved below

² Employing analogous reasoning, the Supreme Court has cautioned against admission of what would otherwise be inadmissible hearsay in order to show “the effect on the listener”:

In limited circumstances inadmissible hearsay might be admissible to show the effect on the listener, but generally the evidence submitted is not relevant. The effect on the listener exception is often used as a ruse to put inadmissible evidence before the jury improperly. . . . [T]he effect on the listener must be relevant and what prompted a call to the police is not relevant.

State v. Parker, 157 Idaho 132, 145 (2014).

(Resp. Br., pp.13-18) or, alternatively, any error by the district court was harmless (Resp. Br., pp.18-19). This Reply Brief addresses the State’s preservation argument.

The State’s preservation argument is based on an apparent misreading of the trial transcript. At trial, the prosecutor’s re-direct examination of Chauntelle Lieske, the Safe Passage executive director, began as follows:

Q. . . . When 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?

MS. HOWE [defense counsel]: Judge, objection under rule of evidence regarding remedial measures. I think it’s not admissible.

THE COURT: Overruled on those grounds.

THE WITNESS: Yes, we did.

(Tr., p.329, L.20 – p.330, L.2.)

The State characterizes the district court’s ruling (“Overruled on those grounds”) as overruling defense counsel’s objection “because it [the objection] lacked specificity” and was vague. (Resp. Br., p.16.) That is not a fair reading of the transcript. Defense counsel objected based on the Rule of Evidence regarding remedial measures. (Tr., p.329, Ls.23-25.) Even if counsel could not immediately recall the number of the Rule, her objection was clearly and unequivocally a reference to Idaho Rule of Evidence 407, which is entitled, “Subsequent Remedial Measures,” and goes on to say that such evidence is not admissible to prove culpable conduct. There was absolutely no vagueness or lack of specificity in counsel’s objection, and the objection was more than adequate to preserve the issue for appeal. *See State v. Hall*, 163 Idaho 744, 772-73 (2018) (noting that an issue is preserved for appeal if there is a clearly-stated objection or if the basis of the objection is apparent from the context). Further, the district court’s response in no way suggests that it found counsel’s objection to be unclear. The court

stated, “Overruled on those grounds.” (Tr., p.330, L.1.) In context, “those grounds” are the grounds stated by defense counsel, *i.e.*, Rule 407.

Since Ms. Estrada’s argument under Rule 407 was preserved for appeal, and the State presents no defense of the district court’s ruling, this Court should hold that the district court erred in overruling Ms. Estrada’s Rule 407 objection.

CONCLUSION

For the reasons detailed above, and in her Appellant’s Brief, Ms. Estrada respectfully requests that this Court vacate her judgment of conviction and remand this case to the district court for a new trial.

DATED this 12th day of November, 2020.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2020, I caused a true and correct copy of the foregoing APPELLANT’S REPLY BRIEF, to be served as follows:

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