6-19-2017

State v. Richardson Respondent's Brief Dckt. 44042

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44042**
Plaintiff-Respondent,	)	
	)	**Nez Perce County Case No.**
v.	)	**CR-2012-82**
	)	
KYLE A. RICHARDSON,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

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STATEMENT OF THE CASE

Nature Of The Case

Kyle A. Richardson appeals from his judgment of conviction for three counts of delivery of methamphetamine. On appeal, he argues that the district court erred when it denied his motion to dismiss his prosecution for an alleged violation of his speedy trial rights; that the court erred when it denied his motion to dismiss based on an alleged failure to comply with the Interstate Agreement on Detainers' timelines; that the court abused its discretion by allowing, after offering a limiting instruction, a state's witness to lay foundation for subsequent testimony, notwithstanding Richardson's objection; and that the court abused its discretion in its order of restitution.

Statement Of The Facts And Course Of The Proceedings

In September 2011, a confidential informant, Robert Bauer, in an effort to gain consideration on his own possession of methamphetamine charge, informed police that Richardson was a drug dealer. (Trial Tr.,[1] p.118, L.20 – p.119, L.20; p.120, L.19 – p.121, L.1.) Officer Dammon directed Mr. Bauer to make a series of recorded phone calls setting up controlled drug buys. (Id., p.120, Ls.14-18; p.122, L.16 – p.124, L.11.) Mr. Bauer successfully completed three controlled buys of methamphetamine from Richardson on September 7, 9, and 14, 2011. (Id., p.133, Ls.10-24; p.140, L.22 – p.141, L.11; p.154, Ls.9-19; p.225, L.7 – p.227, L.16.) Richardson was served with a summons to appear on January 4, 2012. (R., pp.35-36.)

[1] "Trial Tr." refers to the transcript of Richardson's criminal trial held on December 7 and 8, 2015. All other transcripts are referenced by the date of the hearing.

On February 22, 2012, the state charged Richardson with three counts of delivery of methamphetamine. (R., pp.57-58.) Before trial, Mr. Bauer, the state's key witness, died. (See R., p.125.) Because Bauer had testified and was subject to cross-examination at the preliminary hearing, the state sought to admit the preliminary hearing transcript. (R., pp.79-80.) Richardson filed motions in both this case and a separate case objecting to the admission of the transcript. (R., pp.119-23.) Due to the timing of Richardson's motions, the district court had to vacate the trial setting. (8/16/2012 Tr., p.13, L.25 – p.14, L.4.) The court instead held a hearing on the motions and, ultimately, excluded the preliminary hearing testimony. (R., pp.166-70.) With permission from the Idaho Supreme Court, the state filed an interlocutory appeal. (R., pp.182-86.)

Ultimately, the state prevailed on appeal. See State v. Richardson, 156 Idaho 524, 328 P.3d 504 (2014). The remittitur issued on July 16, 2014 (R., p.204), and the district court held a status conference on July 24, 2014 (R., p.206). During that hearing, the parties informed the district court that Richardson was no longer in the State of Idaho but was in federal custody somewhere out-of-state. (7/24/2014 Tr., p.22, L.24 – p.24, L.7.) The district court issued a bench warrant. (R., p.205.)

On February 2, 2015, Richardson filed a motion in which he requested a speedy trial and final disposition. (R., pp.207-08.) Richardson was, however, still in federal custody, and returning him to the State of Idaho required compliance with the Interstate Agreement on Detainers (IAD). The state lodged a detainer against Richardson on June 24, 2015. (See R., p.273.) Thereafter, on July 21, 2015, the state received the "Notice of Untried Indictment" with Richardson's demand for speedy trial and all necessary certificates to comply with the IAD. (R., pp.219-28.)

Richardson subsequently filed motions to dismiss his case based on an alleged violation of his speedy trial rights. (R., pp.230-35, 244-47, 266-68.) The district court denied the motion to dismiss, determining that the IAD applied to Richardson's case and that speedy trial could not be invoked under the IAD until there was compliance with its requirements. (R., p.273.)

Richardson was brought back to Idaho on October 23, 2015 (see R., pp.281, 365) and his trial began on December 7, 2015 (R., pp.313-23). Following Richardson's trial, the jury returned guilty verdicts on each count of delivery of methamphetamine. (R., pp.324-25.) The district court entered judgment against Richardson and sentenced him to concurrent unified sentences of 12 years with five years fixed on each count, running those sentences concurrently with Richardson's federal sentence. (R., pp.355-57.) The court also entered an order requiring Richardson to reimburse $2,100 to the Lewiston Police Department for the controlled-buy monies; $300 to the Idaho State Police for the analysis of the three samples of methamphetamine; and an additional $338.46 to the Idaho State Police for the travel and personnel expenses of a lab analyst who was subpoenaed to testify at Richardson's trial; totaling $2,738.46 in restitution. (Aug. R., pp.9-11.) Richardson filed a notice of appeal timely from his judgment of conviction. (R., pp.359-61.)

ISSUES

Richardson states the issues on appeal as:

> 1. Did the district court err when it violated Mr. Richardson's speedy trial rights?
>
> 2. Did the district court err in denying Mr. Richardson's motion to dismiss based on the State's failure to comply with the Interstate Agreement on Detainers' 180[-]day deadline?
>
> 3. Did the district court err in admitting evidence of Mr. Richardson's prior bad acts?
>
> 4. Did the district court abuse its discretion when it ordered Mr. Richardson to pay restitution in the absence of substantial evidence to support such an award?

(Appellant's brief, p.8.)

The state rephrases the issues as:

1. Has Richardson failed to show that the district court erred when it denied his motion to dismiss this case based on an alleged speedy trial violation?

2. Has Richardson failed to show that the district court erred when it determined that the state did not violate the Interstate Agreement on Detainers?

3. Has Richardson failed to show that the district court abused its discretion when it allowed the detective to lay foundation for his subsequent testimony about his investigation?

4. Has Richardson failed to show that the district court abused its discretion by ordering restitution?

ARGUMENT

I.
Richardson Has Failed To Show That The District Court Erred When It Denied His Motion To Dismiss This Case Based On An Alleged Speedy Trial Violation

A. Introduction

This case began on January 4, 2012, when the state filed its initial criminal complaint and Richardson was served with a summons to appear. (R., pp.32-36.) Between the preliminary hearing and the initial trial date, the state's confidential informant died. (See R., p.125.) Because the confidential informant had testified under oath and been subject to cross-examination at the preliminary hearing, the state requested to introduce his preliminary hearing testimony at trial. (R., pp.79-80.) Richardson objected (R., pp.119-23) and the district court excluded the testimony (R., pp.166-70). The state filed an interlocutory appeal and ultimately prevailed on June 24, 2014. (R., pp.192-202.) The remittitur issued on July 16, 2014. (R., p.204.)

Following remittitur, the district court held a status conference during which the parties informed the court that Richardson was in federal custody. (R., p.206; see also 7/24/2014 Tr., p.22, L.24 – p.24, L.7.) Richardson had been arrested and taken into federal custody on December 1, 2012. (R., p.231.) The district court issued a bench warrant on July 24, 2014. (R., p.205.) Eventually, Richardson was located and, after complying with the procedures set forth in the Interstate Agreement on Detainers, was ultimately returned to Idaho on October 23, 2015. (R., p.281.)[2] Richardson was brought to trial on December 7, 2015. (R., pp.313-23.)

[2] Repeatedly, Richardson claims that he "sat in jail" or "in prison" while waiting for his trial to commence. (Appellant's brief, p.9.) Notwithstanding these assertions, the record appears to show that Richardson did not sit in jail (at least in relation to this case)

Prior to trial, Richardson filed a motion to dismiss, asserting that his speedy trial rights had been violated. (R., pp.244-47, 266-68.) The district court denied the motion. (R., p.273.) On appeal, Richardson asserts that the district court erred when it denied his motion to dismiss, arguing, as he did below, that both his constitutional and statutory speedy trial rights were violated. (Appellant's brief, pp.9-21.) Application of the correct legal standards to the facts of this case, however, shows no violation of Richardson's speedy trial rights. The district court correctly denied Richardson's motion to dismiss and should be affirmed.

B. Standard Of Review

Whether there was an infringement of a defendant's rights to a speedy trial presents a mixed question of law and fact. State v. Clark, 135 Idaho 255, 257, 16 P.3d 931, 933 (2000); State v. Avila, 143 Idaho 849, 852, 153 P.3d 1195, 1198 (Ct. App. 2006). The appellate court defers to the trial court's findings of fact that are supported by substantial and competent evidence, but freely reviews the trial court's application of the law to the facts found. Avila, 143 Idaho at 852, 153 P.3d at 1198; State v. Davis, 141 Idaho 828, 835, 118 P.3d 160, 167 (Ct. App. 2005).

C. Richardson's Constitutional Speedy Trial Rights Were Not Violated

"Both the Sixth Amendment to the United States Constitution and Article 1, § 13 of the Idaho Constitution guarantee to criminal defendants the right to a speedy trial." State v. Lopez, 144 Idaho 349, 352, 160 P.3d 1284, 1287 (Ct. App. 2007). When

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until he was returned to Idaho on October 23, 2015; Richardson only requested credit for time served "from October 23, 2015, the date that he arrived in Nez Perce County from the Federal penitentiary." (R., p.365.)

analyzing claims of speedy trial violations under the state and federal constitutions, the Idaho appellate courts utilize the four-part balancing test set forth by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972). State v. Young, 136 Idaho 113, 117, 29 P.3d 949, 953 (2001). The factors to be considered are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his or her right to a speedy trial; and (4) the prejudice occasioned by the delay. Barker, 407 U.S. at 530. Contrary to Richardson's arguments on appeal (Appellant's brief, pp.10-20), balancing of these factors in this case supports the district court's determination that Richardson failed to establish a violation of his constitutional rights to a speedy trial.

1. The Delay Of Almost Four Years Between Richardson's Arrest And Trial Necessitates Inquiry Into The Other *Barker* Factors

The first factor for this Court to consider is the length of the delay leading up to trial. "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." Barker, 407 U.S. at 530. For purposes of the Sixth Amendment, "the period of delay is measured from the date there is 'a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge.'" Lopez, 144 Idaho at 352, 160 P.3d at 1287 (citing United States v. Marion, 404 U.S. 307, 320 (1971); Young, 136 Idaho at 117, 29 P.3d at 953). "Similarly, under the Idaho Constitution, the period of delay is measured from the date formal charges are filed or the defendant is arrested, whichever occurs first." Lopez, 144 Idaho at 352, 160 P.3d at 1287 (citations omitted).

The state filed its initial criminal complaint, the magistrate found probable cause and bound Richardson over for trial, and Richardson was served with a summons to appear on January 4, 2012. (R., pp.32-36.) Richardson was finally brought to trial on December 7, 2015. (R., pp.313-23; see also Trial Tr.) As Richardson notes on appeal (Appellant's brief, p.12), that is a delay of almost four years. The state agrees with Richardson that such a lengthy delay triggers the balancing test of Barker.

Once the balancing test is triggered, the length of delay also becomes a factor in and of itself. Avila, 143 Idaho at 853, 153 P.3d at 1199. However, the length of the delay is not dispositive. None of the four Barker factors is by itself "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Barker, 407 U.S. at 533. Because (as shown below) the lengthy delays in this case were either directly attributable to Richardson's actions, or were otherwise for valid reasons, and because (despite his arguments to the contrary) Richardson was not unfairly prejudiced by the delay, the length of the delay should be excused.

2. The Lengthy Delays In This Case Are Attributable To Richardson

Implicit in the standards applicable to claims of constitutional speedy trial violations is the recognition that "pretrial delay is often both inevitable and wholly justifiable." Avila, 143 Idaho at 853, 153 P.3d at 1199 (citing Doggett v. United States, 505 U.S. 647, 656 (1992)). For that reason, different weights are assigned to different reasons for the delay. Barker, 407 U.S. at 531. As explained by the Supreme Court:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather

> than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Id. at 531 (footnote omitted). However, delays "caused by the defense weigh against the defendant." Vermont v. Brillon, 556 U.S. 81, 90 (2009). As the Supreme Court noted in Barker, "if delay is attributable to the defendant, then his waiver may be given effect under standard waiver doctrine." Barker, 407 U.S. at 529.

On appeal, Richardson specifically complains of two delays. He first complains that the state caused his trial to be delayed by asking for a continuance due to a key witness' unavailability on the original trial dates. (Appellant's brief, pp.14-15.) But he then notes that "[t]he second trial setting was still within the speedy trial limits." (Id., p.15.) Regardless, requesting a brief continuance due to a key witness' unavailability falls squarely within the "valid reason" exception of Barker, and is a justified delay.

Moreover, the state's request for a continuance for an unavailable witness was not the only such request prior to the first trial setting. Both parties stipulated to a continuance of the preliminary hearing (R., p.45), and Richardson also requested a two-week extension during the pretrial briefing phase (R., p.70). Both of these delays of the court's schedule are, at least in part, attributable to Richardson.

Richardson next complains that the state's interlocutory appeal delayed his trial by two years. (Appellant's brief, pp.15-16.) The delay necessitated by the state's appeal does not count toward the speedy trial calculation under the facts of this case. On March 23, 2012, between the preliminary hearing and the initial trial setting in this case, the state's confidential informant, Robert Bauer, died. (See R., p.125.) Because Mr. Bauer had testified under oath at the preliminary hearing and had been subjected to cross-examination, the state sought to admit his testimony as an unavailable witness

under Idaho Rule of Evidence 804(b)(1). (R., pp.79-80; see also pp.85-102.) Richardson objected to the introduction of the preliminary hearing testimony and asked the district court for an order excluding it on the ground that it would violate his confrontation rights. (R., pp.119-23.) The district court granted Richardson's motion on that ground. (R., pp.166-70.)

But that ground was erroneous. As the Idaho Supreme Court explained in State v. Richardson, 156 Idaho 524, 527-28, 328 P.3d 504, 507-08 (2014),[3] all that is required to satisfy the defendant's confrontation rights is an adequate opportunity to cross-examine the witness. The magistrate court did not limit the scope of Richardson's cross-examination; the cross-examination included all relevant trial issues; and Mr. Bauer did not hamper Richardson's cross-examination by being evasive or untruthful in his answers. Id. at 529, 328 P.3d at 509. Richardson therefore had an adequate opportunity to cross-examine Mr. Bauer during the preliminary hearing, and the district court erred when it concluded otherwise. Id. at 527-30, 328 P.3d at 507-10. Moreover, contrary to his arguments before the district court, Richardson had sufficient opportunity to prepare to cross-examine Mr. Bauer because, even before the state revealed his identity, the evidence in this case showed that Richardson knew that Mr. Bauer was the confidential informant. Id. at 531-32, 328 P.3d at 511-12. The Idaho Supreme Court therefore held that the preliminary hearing transcripts could be admitted at trial. Id. at 532, 328 P.3d at 512.

Richardson acknowledged below that, "since the trials were vacated because of some lateness of the motions" to exclude the testimony, the delays were at least in part

[3] The Idaho Supreme Court's opinion in State v. Richardson is included in the clerk's record at pages 192-202.

attributable to him and there was no "implication of speedy trial at all because of that." (8/16/2012 Tr., p.15, Ls.4-8.) Similarly, because Richardson caused the need for the interlocutory appeal by inviting the district court to exclude essential evidence on an erroneous basis, the attendant delay was also attributable to Richardson and does not implicate his speedy trial rights.

Even if the delay for the interlocutory appeal were attributable to the state, it still would not count toward a speedy trial calculation. As the United States Supreme Court has previously held, where "[t]here is no showing of bad faith or dilatory purpose on the Government's part"; where "the Government's position [on appeal] was strong"—and the Court recognized that reversals on appeal "are prima facie evidence of the reasonableness of the Government's actions"; and "the District Court chose not to subject [the defendant] to any actual restraints pending the outcome of the appeal[]"; the delay caused by an interlocutory appeal should not be accorded any weight in determining whether the defendant suffered a violation of his speedy trial rights. United States v. Loud Hawk, 474 U.S. 302, 316 (1986).

Richardson has failed to show any "bad faith or dilatory purpose on the state's part" in this case. Rather, the state's appeal was necessary: The witness, Mr. Bauer, was the confidential informant who directly participated in the controlled buys with Richardson, which were the bases for the charges against him. And as the state explained, it could not procure any other evidence of this direct nature. (R., p.155.) The state prevailed on appeal, see Richardson, *supra*; so there is *prima facie* evidence, unchallenged by Richardson, that the state's appeal was reasonable. And finally, though Richardson was incarcerated before the appellate proceedings concluded, the

district court did not place any restraints upon him; rather, Richardson was arrested on December 1, 2012, and was subsequently convicted and incarcerated on unrelated federal charges during the pendency of the entire appeal. (R., p.231.) Any delay caused by the state's interlocutory appeal is reasonable and should not be given any weight in determining whether Richardson's speedy trial rights were violated.

Finally, though not noted by Richardson on appeal, another substantial delay in this case was caused by Richardson's incarceration in federal prison on an unrelated conviction. As noted above, Richardson was first taken into federal custody on December 1, 2012. (R., p.231.) After remittitur entered in the interlocutory appeal on July 16, 2014 (R., p.204), the district court held a hearing on Richardson's case (R., p.206; 7/24/2014 Tr.). During that hearing, the parties informed that court that Richardson was in federal custody, and, in accordance with the parties' request, the district court issued a bench warrant. (7/24/2014 Tr., p.22, L.24 – p.24, L.7; R., p.205.) That warrant was not returned until October 23, 2015 (R., p.281), when Richardson was finally brought back to the State of Idaho. This delay, occasioned by Richardson's federal conviction and incarceration, is not attributable to the state.

3. Richardson Asserted His Constitutional Speedy Trial Rights

The third factor in the Barker analysis is whether and how the defendant asserted his constitutional right to a speedy trial. A defendant's assertion of his right is "entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." Barker, 407 U.S. at 531-32; Davis, 141 Idaho at 839, 118 P.3d at 171. "[F]ailure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." Id.

The district court found, and it is not disputed, that Richardson asserted his speedy trial rights. (See R., p.273.) Richardson asserts that the district court erred in concluding that Richardson's assertion did not become effective until June 24, 2015, noting that he "caused to be filed" a speedy trial demand on February 2, 2015. (Appellant's brief, pp.16-17.) Because Richardson was in federal custody when he began to assert his speedy trial rights, the district court is correct under the Interstate Agreement on Detainers (IAD) that no demand became effective until after the formal lodging of a detainer. See I.C. § 19-5001. The IAD is addressed in greater detail in Argument II. However, for purposes of this argument, it is sufficient to recognize that Richardson did assert his speedy trial rights.

4. Richardson Failed To Establish That He Was Unfairly Prejudiced By The Delays In His Case

The final and most important factor in the Barker analysis is the nature and extent of any prejudice suffered by the defendant as a result of the delay. Barker, 407 U.S. at 532. As explained by the Idaho Supreme Court:

> Prejudice is to be assessed in light of the interests of defendants which the right to a speedy trial is designed to protect. Those interests are (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused, and (3) to limit the possibility that the defense will be impaired.

Young, 136 Idaho at 118, 29 P.3d at 954 (citing Barker, 407 U.S. at 532). "The third of these is the most significant because a hindrance to adequate preparation of the defense 'skews the fairness of the entire system.'" Lopez, 144 Idaho at 355, 160 P.3d at 1290 (citations omitted).

Though Richardson was incarcerated while awaiting trial, and during that time may have felt the anxiety and concern that any incarcerated individual would suffer, he was in federal custody, not in Idaho's custody. In fact, notwithstanding Richardson's assertions to the contrary (see Appellant's brief, p.9), it appears that Richardson never "sat in jail" in relation to this case until he was returned to Idaho on October 23, 2015 (see R., p.365 (only requesting credit for time served from that date)). Contrary to his arguments on appeal (Appellant's brief, pp.17-18), any prejudice Richardson suffered while in federal custody is due to his being convicted and incarcerated in an unrelated federal case, not to delays in his Idaho case.

Richardson also argues that he suffered prejudice due to the fading memories of Officers Dammon and Yount, two witnesses for the state. (Appellant's brief, pp.18-19.) The state submits that the fading memories of key state's witnesses—the investigating officers in this case—does not prejudice the *defense*, but the prosecution. The United States Supreme Court recognized as much when it noted:

> Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof.

Barker, 407 U.S. at 521. Because, if anything, the delay prejudiced the prosecution, "this factor should be given a very light weight, if any," for Richardson. Avila, 143 Idaho at 854, 153 P.3d at 1200 (citation omitted).

5. A Balancing Of The *Barker* Factors Weighs Against A Finding Of A Speedy Trial Violation

The four Barker factors, together with any other relevant circumstances, must be balanced and weighed to determine whether an individual's right to a speedy trial was violated. Barker, 407 U.S. at 533. In this case, though there was a considerable delay in bringing Richardson to trial, because almost all of that delay is directly attributable to Richardson's inviting the district court to make an erroneous ruling on the admissibility of essential evidence in his case (which necessitated an interlocutory appeal), and his federal conviction and incarceration on unrelated charges, it does not count toward the speedy trial calculation. Moreover, though Richardson did assert his speedy trial rights, he failed to demonstrate that he was unfairly prejudiced by the delay. Richardson has therefore failed to show error in the denial of his motion to dismiss.

D. Richardson Waived His Statutory Speedy Trial Rights

Richardson also argues that his statutory speedy trial rights were violated. (Appellant's brief, pp.20-21.) This argument fails because Richardson waived his statutory speedy trial rights when he caused his trial to be postponed. Under Idaho Code § 19-3501(2), the district court, "unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed … [i]f a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court." On February 22, 2012, the state filed an information charging Richardson with three counts of delivery of methamphetamine. (R., pp.57-58.) The trial was initially set for June 4, 2012 (R., pp.67-68), but was continued to August 20, 2012, to accommodate a witness who would

have been unavailable on the initial date (R., pp.72-74). The subsequent date would have been within the statutory timeframe.

However, less than two weeks before trial, Richardson filed motions in both this case and a related case objecting to the state's motion to admit the preliminary hearing transcript at trial. (R., pp.119-23.) At a hearing the following week, the district court determined that, "because the motions filed on [Richardson's] behalf [had] come in very close to the trial date" and needed to be ruled upon, it would have to "vacate the trial settings for Monday." (8/16/2012 Tr., p.13, L.25 – p.14, L.4.) Defense counsel concurred and further assured the court that, because the trial was vacated due to "some lateness of the motions," the defense did not "consider that there [was] any implication of speedy trial at all because of that." (Id., p.15, Ls.4-8.) Because the "lateness of [Richardson's] motions" required the district court to "vacate the trial setting," Richardson waived his statutory speedy trial rights. State v. Folk, 151 Idaho 327, 332, 256 P.3d 735, 740 (2011).

Even if Richardson had not waived his statutory speedy trial rights when he caused his trial date to be postponed, there still would be no violation of those rights because, as shown above, any delays in this case were for good cause. "[G]ood cause means that there is a substantial reason that rises to the level of a legal excuse for the delay." Clark, 135 Idaho at 260, 16 P.3d at 936. The first significant delay in this case arose from the filing of a necessary interlocutory appeal to correct the district court's erroneous exclusion of the confidential informant's prior testimony. "An interlocutory appeal by the State from an order excluding evidence ordinarily is a valid reason that justifies delay." Young, 136 Idaho at 116, 29 P.3d at 952. This is especially true in this

case: The state did not appeal because it wanted to delay the case; the state appealed because the confidential informant was the only witness who directly participated in the controlled buys with Richardson, and his testimony was essential to the state's case. And the state prevailed on appeal, which is *prima facie* evidence that its arguments and grounds for appeal were reasonable. Loud Hawk, 474 U.S. at 316.

The second significant delay in bringing Richardson to trial, as outlined above, was caused by his conviction and incarceration on unrelated federal charges. After remittitur entered on the state's interlocutory appeal, the parties informed the district court that Richardson was being held out-of-state in federal custody. (7/24/2014 Tr., p.22, L.24 – p.24, L.7.) The state ordinarily cannot proceed against a defendant until that defendant is within its jurisdiction. After compliance with the IAD, Richardson was finally returned to the State of Idaho on October 23, 2015. (R., p.281.) And he was brought to trial on December 7, 2015. (R., pp.313-23.)

Thus, either Richardson waived his statutory speedy trial rights when he caused his trial date to be postponed by filing the late motions, or any subsequent delays of his trial were for good cause. Under either theory, Richardson has failed to show that his statutory speedy trial rights were violated. The district court's order dismissing Richardson's motion to dismiss should be affirmed.

Finally, even if Richardson had not waived his statutory speedy trial rights, and the interlocutory appeal and Richardson's absence from the state did not constitute good cause sufficient to justify delay of his trial beyond the six-month statutory period of Idaho Code § 19-3501, any error in the court's order denying Richardson's motion to dismiss would still be harmless. Idaho Criminal Rule 52 provides that "[a]ny error,

defect, irregularity or variance which does not affect substantial rights shall be disregarded." Where, as here, a defendant is facing felony charges, the remedy for a statutory speedy trial violation is dismissal without prejudice. See I.C. §§ 19-3501, 19-3506. Thus, even had the trial court dismissed the case on the basis of a statutory speedy trial violation, the state could have simply refiled the charges and proceeded to trial against Richardson in a new criminal action.

II.
Richardson Has Failed To Show That The District Court Erred When It Determined That The State Did Not Violate The Interstate Agreement On Detainers

A. Introduction

As noted above, Richardson filed below a motion to dismiss his case based on an alleged violation of his speedy trial rights. (R., pp.244-47, 266-68.) The district court denied that motion, finding that the Interstate Agreement on Detainers (IAD) applied to Richardson's case, that a detainer was not lodged until June 24, 2015, and that speedy trial could not be invoked until that date. (R., p.273.) Richardson asserts that the district court erred when it denied his motion to dismiss because, he argues (contrary to precedent), his substantial compliance with the IAD should have been sufficient to trigger the IAD's statute of limitation. (Appellant's brief, pp.21-36.) Application of the correct law to the facts before the district court, however, shows no error in the district court's denial of Richardson's motion to dismiss based on the IAD.

B. Standard Of Review

The interpretation and construction of a statute presents questions of law over which appellate courts exercise free review. State v. Thompson, 140 Idaho 796, 798,

102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The State Of Idaho Did Not Violate The Interstate Agreement On Detainers' Statute Of Limitation

The authority to extradite fugitives and return them to answer criminal charges filed against them is found in Article IV, § 2, Cl. 2 of the United States Constitution, which reads:

> A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

This provision gives states the *right* to obtain the return of fugitives who flee to other states. It does not, however, create a *mandatory obligation* on the part of any state to seek or secure the return of such fugitives. Rather, the decision to seek extradition lies wholly within the discretion of the executive authority of the demanding state, and a fugitive has no right to compel his extradition. Aycox v. Lytle, 196 F.3d 1174, 1178 (10th Cir. 1999); Brownfield v. Stovall, 85 F.App'x 123, 126 (10th Cir. 2003).

Unlike the demanding state, which has discretion to choose whether to seek extradition, asylum states generally do not have such discretion. As the United States Supreme Court has repeatedly explained, "the duty imposed by the Extradition Clause on the asylum State [is] mandatory" and "afford[s] no discretion to the executive officers or the courts of the asylum State." New Mexico, ex rel. Ortiz v. Reed, 524 U.S. 151, 154-55 (1998) (citing Puerto Rico v. Branstad, 483 U.S. 219, 227 (1987); California v. Sup. Court of Cal., San Bernardino Cty., 482 U.S. 400, 405-06 (1987); Kentucky v.

Dennison, 24 How. 66 (1860)). There is, however, an exception to this rule under the Uniform Criminal Extradition Act, which provides that when

> a criminal prosecution has been instituted against such person under the laws of [the asylum] state and is still pending, the governor in his discretion, either may surrender such person on demand of the executive authority of another state or hold him until he has been tried and discharged, or convicted and punished in this state.

I.C. § 19-4519.

Recognizing both that "charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation," and that "proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures," the federal government and most states (including Idaho) have adopted the IAD "to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." I.C. § 19-5001(a). Thus, the basic purposes of the IAD are to give prisoners the right to an expeditious trial after compliance with its terms, and to give states the right to obtain a prisoner for the purposes of trial. Alabama v. Bozeman, 533 U.S. 146, 151 (2001).

To facilitate the expeditious and orderly disposition of these charges, after specific requirements have been met, the IAD requires states to bring the fugitive to trial within 180 days. I.C. § 19-5001(c)(1). After reviewing the record, the district court determined that the IAD applied to this case and correctly concluded that the state had

not violated Richardson's rights under the IAD. (R., p.273.) As the Idaho Court of Appeals has previously recognized:

> For a defendant to invoke the speedy trial provision of the IAD, three events must occur: (1) the receiving State must place a detainer on a prisoner in the sending State, I.C. § 19–5001(c)(1); (2) the prisoner must deliver to the warden or custodial official holding custody over the prisoner a written notice and request for final disposition, I.C. § 19–5001(c)(2); and (3) the warden or custodial official must promptly forward the prisoner's request and a certificate containing the "term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner" to the appropriate prosecutor and district court in the receiving State, I.C. § 19–5001(c)(1), (2).

State v. Mangum, 153 Idaho 705, 709, 291 P.3d 44, 48 (Ct. App. 2012) (footnote omitted).

In this case, the state requested that a detainer be lodged against Richardson on June 24, 2015. (R., pp.255, 273.) After that detainer was lodged, Richardson then delivered his written notice and request for final disposition in July. (R., pp.257-64.) Federal correctional officials forwarded Richardson's request, together with all appropriate certificates, to the Idaho prosecutor on July 22, 2015. (R., p.257.) Finally, Richardson was brought to trial on December 7, 2015 (See Trial Tr.; see also R., pp.241, 313-23), which was within the applicable 180-day limit. Richardson's rights under the IAD were not violated.

On appeal, Richardson argues that he substantially complied with the IAD by sending letters to the court and county prosecutor's office requesting that he be returned to Idaho for his trial, and therefore the 180-day limit began months earlier than recognized by the district court. (Appellant's brief, pp.22-36.) This argument fails.

Idaho requires strict compliance, not substantial compliance, with the IAD. Mangum, 153 Idaho at 713, 291 P.3d at 52. As detailed above, Richardson did not strictly comply with the requirements of the IAD until July 22, 2015.

Richardson further asserts that the strict compliance requirement of Mangum is tempered where "intentional interference by State parties is shown." (Appellant's brief, pp.27-30 (citing Mangum, 153 Idaho at 713, 291 P.3d at 52).) Richardson then appears to argue that the state's inability to expedite his extradition after receiving his non-compliant "demands" for trial constitutes "intentional interference." (See Appellant's brief, pp.28-30.) This argument fails on two grounds: First, as shown at the outset of this argument, a defendant cannot compel his extradition. It is entirely within the discretion of the executive of the demanding state if and when to seek extradition; it is therefore entirely within its discretion if and when to file a detainer against a fugitive. Second, this is the exact scenario addressed by the Court of Appeals in Mangum. See id., 153 Idaho at 707-08, 713, 291 P.3d at 46-47, 52. That Court's holding, requiring strict compliance, is no less applicable under the facts of this case.

Finally, Richardson asserts that the bench warrant issued by the district court on July 24, 2014, is the equivalent of a detainer. (Appellant's brief, pp.30-33.) This argument fails on multiple grounds. First, as noted above, Idaho precedent requires strict compliance with the IAD. Mangum, 153 Idaho at 713, 291 P.3d at 52. The mere "equivalent" of a detainer is insufficient to *strictly* comply with the requirements of the IAD. Second, under the IAD, the detainer is to be lodged by the appropriate prosecuting officer of the demanding state. See I.C. § 19-5001(c)(1), (d)(1). A bench warrant issued by a district judge is not a detainer lodged by a prosecuting officer.

Third, the United States Supreme Court has defined a detainer as "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent." Carchman v. Nash, 473 U.S. 716, 719 (1985). The bench warrant, on its face, does none of these things. (See R., p.205.) While a bench warrant issued by a district court may be a prerequisite for lodging a detainer, the bench warrant is not a detainer.

Under the IAD, the 180-day limit was triggered when Idaho officials actually received all of the required certificates and demands from the federal authorities. Idaho law requires strict compliance with the request provision of the IAD. As demonstrated by the record, Idaho officials did not receive the required certificates until July 22, 2015. (R., p.257.) Richardson was brought to trial on December 7, 2015. (R., pp.313-23; see also Trial Tr.) The trial thus commenced within the 180-day limit established by the IAD. Richardson has therefore failed to show any violation of his rights under the IAD. The district court correctly denied Richardson's motion to dismiss and should be affirmed.

III.
Richardson Has Failed To Show That The District Court Abused Its Discretion When It Allowed The Detective To Lay Foundation For His Subsequent Investigation

A. Introduction

During the criminal trial, while providing foundation for his subsequent testimony, the prosecutor asked Detective Dammon how he became involved in the criminal case. (Trial Tr., p.118, L.20 – p.119, L.3.) The detective answered that he had received information from a confidential informant. (Id., p.119, Ls.4-5.) Defense counsel made a

preemptory objection, which was overruled for being premature. (Id., p.119, Ls.6-12.) The following exchange then ensued:

> BY MR. COLEMAN:
> Q. So how—how did you become involved on that day?
>
> A. I was provided information from a confidential informant about a Kyle Richardson being involved in the distribution—
>
> MR. RADAKOVICH: Objection.
>
> THE WITNESS: —of controlled substances.
>
> MR. RADAKOVICH: It's hearsay.
>
> MR. COLEMAN: May I respond?
>
> MR. RADAKOVICH: More than that, it's a violation of 404(b).

(Id., p.119, Ls.13-24.) The district court granted the prosecutor leave to respond and the prosecutor explained,

> Your Honor, this isn't hearsay. It's being used to show—it's not being used to show the truth of the matter asserted; it's just being used to show the effect it had on this listener in terms of what he did with his investigation, the next step.

(Id., p.119, L.25 – p.120, L.6.) The district court agreed and, with a limiting instruction, allowed the testimony as follows:

> Well, I'm going to allow it. It's foundational. The jury is instructed that this is information being provided only to show the foundation for what the officer did. It's not for the truth of the matter of what's been said by the out-of-court statement.

(Id., p.120, Ls.7-12.) The district court never ruled on the Rule 404(b) objection.

On appeal, Richardson argues that the district court abused its discretion by allowing the elicited testimony to be presented to the jury over his Rule 404(b) objection.

(Appellant's brief, pp.36-48.) Application of the correct legal principles to the facts of this case, however, shows no abuse of discretion.

B. Standard Of Review

A trial court's decision to admit or exclude evidence is generally reviewed for an abuse of discretion. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009) (citations omitted). "In the case of 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. Shackelford, 150 Idaho 355, 363, 247 P.3d 582, 590 (2010) (internal citations and quotations omitted).

C. The Testimony Elicited From Detective Dammon Was Not Hearsay

As noted above, Richardson objected at trial to the elicited testimony on the basis that it was hearsay. (Trial Tr., p.119, Ls.13-21.) Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." I.R.E. 801(c). But this testimony was not offered to prove the truth of the matter asserted, but only to show its effect on the detective, in terms of why he commenced the investigation. (See Trial Tr., p.120, Ls.1-6.) And the district court took the extra step of instructing the jury to ensure that the testimony would not be considered for the truth of the matter asserted, but only as foundation for the detective's investigation. (Id., p.120, Ls.7-12.) Because the elicited testimony was not offered for the truth of the matter asserted, and the district court specifically limited the jury's ability to consider the testimony for the truth of the matter

asserted, it was not hearsay. The district court properly overruled Richardson's hearsay objection and should be affirmed.

D. Contrary To Richardson's Arguments On Appeal, Detective Dammon's Elicited Testimony Should Not Be Excluded Under Rule 404(B)

On appeal, Richardson does not challenge the district court's actual ruling; instead, he claims that the evidence should have been excluded under 404(b). (Appellant's brief, pp.36-48.) This argument fails. Under Rule 404(b), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." If the evidence had been admitted for the purpose of showing that Richardson had previously dealt drugs, such evidence would be properly analyzed under Rule 404(b). But that is not what happened in this case. Rather, as shown above, the prosecutor noted that the evidence was being offered, not for the truth of the matter asserted, but to show why Detective Dammon became involved in the investigation. (Trial Tr., p.119, L.14 – p.120, L.6.) And the district court gave the jury specific limiting instructions, explaining that the evidence was only admitted for the purpose of foundation and could not be considered for the truth of the matter asserted. (Id., p.120, Ls.7-12.) Because this evidence was specifically not admitted "to prove [Richardson's] character … in order to show that [he] acted in conformity therewith," it is not 404(b) evidence.

Richardson further argues that the district court admitted the testimony as *res gestae*. (Appellant's brief, pp.39-44.) This argument is without merit. As can be seen through a reading of the transcript, nowhere does that term—or any of its analogues—appear in relation to the challenged testimony. Richardson also complains that he was

not given notice that the state would use the supposed 404(b) evidence. (Appellant's brief, pp.44-46.) This argument is too without merit. First, as shown above, the elicited testimony is specifically not 404(b) evidence. Second, while Richardson's objection was likely sufficient to preserve his generalized 404(b) argument, he never raised the issue of notice below, and this specific argument is therefore not preserved. See State v. Armstrong, 158 Idaho 364, 367, 347 P.3d 1025, 1028 (Ct. App. 2015) ("For an objection to be preserved 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.").

E. Even If The District Court Abused Its Discretion By Permitting The Prosecutor To Elicit The Challenged Testimony, Such Error Was Necessarily Harmless

Even had the district court abused its discretion by allowing the elicited testimony, such would not constitute reversible error because it would be harmless. "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected …." I.R.E. 103(a). See also I.C.R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). In determining whether error is harmless, "[t]he inquiry is whether, beyond a reasonable doubt, a rational jury would have convicted [the defendant] even without the admission of the challenged evidence." State v. Johnson, 148 Idaho 664, 669, 227 P.3d 918, 923 (2010) (citations omitted).

This Court may determine beyond a reasonable doubt that the elicited testimony did not affect Richardson's conviction on at least two grounds. First, as shown above, the district court properly instructed the jury, eliminating the potential for prejudice to Richardson by limiting the purpose for which the jury could consider the testimony. This

Court "presume[s] that a jury follows the instructions it is given." State v. Joy, 155 Idaho 1, 7, 304 P.3d 276, 282 (2013). If the jury followed the instructions in this case, then it only considered the testimony as foundation for the officer's investigation and not for the truth of any matters asserted, and there is no prejudice.

Second, the jury did not convict Richardson because there was evidence that a convicted drug user, in an effort to mitigate the punishment he was facing for his use, accused Richardson of also being involved in the distribution of drugs. It convicted Richardson based on the overwhelming evidence that he, on three separate occasions, delivered methamphetamine to the confidential informant. (See Trial Tr., p.122, L.13 – p.166, L.13; p.224, L.12 – p.227, L.16; p.254, L.19 – p.271, L.2; State's Exs. 4-11.) This Court, therefore, may determine beyond a reasonable doubt that omission of the challenged testimony did not contribute to Richardson's conviction.

The district court correctly overruled Richardson's trial objection on hearsay grounds because the elicited testimony was not offered for the truth of the matter asserted and therefore was not hearsay. Richardson's argument that admission of the testimony violated Rule 404(b) also fails because the testimony did not present 404(b) evidence. Finally, even had the district court abused its discretion by allowing the challenged testimony, such error would necessarily be harmless because that testimony did not affect the outcome of Richardson's trial. The district court's ruling should be affirmed.

IV.
Richardson Has Failed To Show That The District Court Abused Its Discretion By Ordering Restitution

A. Introduction

The district court ordered Richardson to pay restitution in the amount of $2,738.46 pursuant to Idaho Code § 37-2732(k). (Aug. R., p.11.) Of this total, $2,100 would be paid to the Lewiston Police Department to reimburse it for the "buy money" it expended for the drug transactions, and $638.46 would be paid to the Idaho State Police for analysis on three separate samples of methamphetamine and for the travel and personnel expenses of an expert witness at Richardson's trial, Officer David C. Sincerbeaux. (Aug. R., pp.9-11.) On appeal, Richardson challenges $300 of the buy money and the expenses of the expert witness, which totaled $338.46. (Appellant's brief, pp.49-54.) Richardson's challenges fail. The district court's award of restitution should be affirmed.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013). The trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2013).

C. The District Court's Order Of Restitution Was Appropriate

"Restitution may be ordered by the district court under I.C. § 37-2732(k) once a defendant is convicted of, or pleads guilty to, a crime under Title 37, Chapter 27 of the

Idaho Code." State v. Gomez, 153 Idaho 253, 257-58, 281 P.3d 90, 94-95 (2012). "Since I.C. § 37-2732(k) is short on specific guidance regarding the nature of a restitution award or the procedure to obtain such an award, we find guidance in the general restitution statute, I.C. § 19-5304." Id. Under that statute, a restitution award must be based "upon the preponderance of evidence submitted by the prosecutor, defendant, victim, or presentence investigator." State v. Weaver, 158 Idaho 167, 170, 345 P.3d 226, 229 (Ct. App. 2014) (citing I.C. § 19-5304(6)). A restitution award "will not be disturbed if supported by substantial evidence." Id. (citations omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion." Id. (citing Straub, 153 Idaho at 885, 292 P.3d at 276).

The district court's restitution award was supported by substantial evidence. Below, the state submitted evidence both in the form of exhibits, which included receipts from the Lewiston Police Department and the Idaho State Police, and direct testimony in response to concerns raised by the defense. Exhibit A showed that the Lewiston Police Department had expended buy money in the amounts of $200 on September 7, 2011; $400 on September 9, 2011; $1,200 on September 14, 2011; and an additional $300 on September 23, 2011. (Aug. R., p.4.) Detective Dammon, who prepared the document, explained that the first three disbursements were for drug buys. (5/19/2016 Tr., p.16, Ls.12-17.) However, during two of those buys, the police team received drugs in advance, and so still owed money, hence the additional $300. (Id., p.16, Ls.18-24; see also Trial Tr., p.165, Ls.10-20; p.224, L.19 – p.225, L.12.) All of the amounts requested, totaling $2,100, were expended during the course of the police investigation. (5/19/2016 Tr., p.16, L.24 – p.17, L.3.)

Exhibits B-E detailed the expenses of the Idaho State Police. Exhibit B was the subpoena commanding Officer Sincerbeaux, a forensic expert, to appear at Richardson's trial. (Aug. R., p.5.) Officer Sincerbeaux appeared as an expert witness at trial. (Trial Tr., pp.252-73; see also Aug. R., p.10.) Exhibit C was the receipt for costs incurred for the expert witness's travel and hourly expenses. (Aug. R., p.6.) It showed that the witness had accrued 5.5 hours of work at $37.32 per hour for $205.26, and per diem, lodging, and transportation costs of $133.20, for a total of $338.46. (Id.) Exhibits D and E were receipts for costs incurred for the forensic analysis performed by the Idaho State Lab on the three samples of methamphetamine tested in Richardson's criminal cases, each costing $100, for a total of $300. (Aug. R., pp.7-8.) All of these exhibits detailed that these requests were in relation to Richardson's criminal cases, and Exhibits B and C listed the case numbers. (Aug. R., pp.5-8.)

Richardson stipulated to the admission of the state's exhibits (5/19/2016 Tr., p.14, Ls.15-22), and specifically did not dispute the Idaho State Lab's analysis fees (id., p.14, Ls.3-4). However, counsel raised three objections to the restitution: (1) that there were only three controlled buys but restitution was being sought for four disbursements; (2) that counsel did not know how the state's expert witness calculated his hourly rate and believed that the witness may have mitigated his lodging costs by traveling and testifying on the same day; and (3), generally, that the state was seeking restitution at all, as (Richardson argued) it was not a "victim" under the restitution statute. (Id., p.13, L.13 – p.14, L.11.)

Ultimately, the district court did not find Richardson's arguments persuasive. As the district court correctly concluded, the state could recover restitution for costs

incurred by law enforcement agencies in investigating violations of the Controlled Substances Act. (Aug. R., p.10.) And the district court found that all of the restitution sought was proper under Idaho Code § 37-2732(k). (Aug. R., pp.10-11.) It found, based on the testimony of Detective Dammon and the exhibits, that the state had expended a full $2,100 in buy money (including the challenged $300), "which was necessary to set up the controlled buys which led to [Richardson's] arrest." (Id.) It found that the expert witness testified at trial and the Idaho State Police submitted his travel and personnel costs in the amount of $338.46. (Id.) There was no evidence that the costs associated with the state's expert witness were inappropriate. (Aug. R., p.11.) Finally, though not challenged, the district court found that the Idaho State Police had expended $300 on tests confirming that the substance from Richardson's case was methamphetamine. (Aug. R., pp.10-11.)

On appeal, Richardson must show clear error in the district court's factual findings. See Weaver, 158 Idaho at 170, 345 P.3d at 229. He cannot do so. Instead, Richardson raises two objections to the restitution award: First, he claims that under State v. Cunningham, 161 Idaho 698, 390 P.3d 424 (2017), the cost receipt for expenses of the expert witness was insufficient to constitute evidence to support the restitution award. (Appellant's brief, pp.52-54.) Second, he claims that, because Officer Dammon lacked direct knowledge on the final $300 payment of buy money, his testimony was insufficient to constitute evidence supporting that amount of restitution. (Appellant's brief, p.54.) Both arguments ultimately fail.

Regarding the costs of the expert witness, as noted above, under Idaho Code § 37-2732(k), the state is entitled to restitution for costs actually incurred. Contrary to

Richardson's argument on appeal that there is no evidence that restitution reflects actual costs, Exhibit C, on its face, is a request "for cost incurred by the Idaho State Police lab for travel to testify on this case 12/08/15." (Aug. R., p.6.) And, contrary to Richardson's assertion that "there is nothing" explaining "what the costs were for," the exhibit actually delineates the costs: $205.26 for the personnel costs (which defense counsel apparently understood included the expert's appearance in court and the two to two and a half hours of travel time between Lewiston and Coeur d'Alene, each way (see 5/19/2016 Tr., p.20, L.4 – p.21, L.3)) and $133.20 for the expert witness's per diem, lodging, and transportation expenses (Aug. R., p.6). Because the Idaho State Police, as averred in the receipt and found by the district court, actually incurred these costs, they were entitled to the $338.46 of restitution. The district court's restitution award is therefore supported by substantial evidence and should not be disturbed on appeal.

Second, Richardson argues that $300 of the $2,100 of restitution requested for the "buy money" was inappropriate because "the witness who testified only had direct knowledge of the payment of $1,800 … and was not present for the $300 purportedly spent on September 23, 2011." (Appellant's brief, p.54.) Thus, Richardson argues that restitution for the $300 of buy money is inappropriate because it was based on hearsay. That argument is without merit. As noted above, because Idaho Code § 37-2732(k) is "short on specific guidance regarding the nature of a restitution award or the procedure to obtain such an award," appellate courts "find guidance in the general restitution statute." Gomez, 153 Idaho at 257-258, 281 P.3d at 94-95. Under the general restitution statute, I.C. § 19-5304:

> Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such

> hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

I.C. § 19-5304(6). Because the district court specifically may consider hearsay that is relevant to the issue of restitution, and there is no argument that the officer's testimony was not relevant, the district court properly considered this evidence. The district court's restitution award is therefore supported by substantial evidence and should not be disturbed on appeal.

CONCLUSION

The state respectfully requests that this Court affirm Richardson's conviction and sentence, and the district court's order of restitution.

DATED this 19th day of June, 2017.

_/s/ Russell J. Spencer_____
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of June, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_/s/ Russell J. Spencer_____
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd