

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

STATE OF IDAHO, )  
 ) No. 47796-2020  
 Plaintiff-Appellant, )  
 ) Canyon County Case No.  
 v. ) CR14-18-21278  
 )  
 ALEJANDRA MARIA OCHOA, )  
 )  
 Defendant-Respondent. )  
 \_\_\_\_\_ )

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**REPLY BRIEF OF APPELLANT**  
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**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**  
\_\_\_\_\_

**HONORABLE D. DUFF McKEE, District Judge  
HONORABLE JEROLD W. LEE, Magistrate Judge**  
\_\_\_\_\_

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## ARGUMENT

### I.

#### The District Court Erred When It Concluded That Evidence Of The Victim's Toxicology Screen Was Relevant And Admissible To Prove Comparative Negligence

##### A. Introduction

The evidence related to the victim's toxicology screen was irrelevant to Ochoa's negligence or the cause of the victim's death; the magistrate properly excluded it as irrelevant and unfairly prejudicial; and the district court employed an erroneous legal theory of comparative negligence when it reversed on appeal. (Appellant's brief, pp. 12-18.) Ochoa does not dispute that the evidence is not relevant to her negligence or that the district court employed an erroneous legal theory, but claims that the district court nevertheless correctly reversed the magistrate. (Respondent's brief, p. 8.<sup>1</sup>) Specifically, Ochoa contends that the toxicology screen evidence was relevant to the element of causation and not unfairly prejudicial. (Respondent's brief, pp. 8-12.) Ochoa fails to articulate how the evidence in question is relevant to the victim's cause of death, however. Application of the correct legal standards shows the magistrate did not err in excluding the evidence and that the district court erred in reversing on intermediate appeal.

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<sup>1</sup> Ochoa also argues the state did not preserve the issue of relevancy for appeal because it "only argued that the toxicology results were speculative and overly prejudicial to the courts below." (Respondent's brief, p. 9.) The state's first topic heading in its motion in limine was: "**The victim's toxicology results are not relevant to Defendant's vehicular manslaughter charge because there is no evidence the substances in his blood contributed to the collision.**" (R., p. 44 (bolding original).) The State argued: "The Methamphetamine in the victim's system is irrelevant because it does alter the probability that the Defendant was a significant cause in contributing to the victim's death." (R., p. 45.) Ochoa's contention that the state did not preserve the relevancy argument is specious.

B. The Evidence Of The Victim's Toxicology Screening Was Irrelevant To Whether Ochoa's Failure To Yield The Right Of Way Was A Significant Cause Contributing To The Victim's Death

Evidence is relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence.” I.R.E. 401(a). The causation element for vehicular manslaughter is met if the defendant’s operation of her motor vehicle was “a significant cause contributing to the [victim’s] death.” I.C. § 18-4006(3)(c). A victim’s negligence negates the defendant’s negligence as a cause of death only where such negligence was “an unforeseeable and extraordinary occurrence” that “breaks the causal chain between the defendant’s culpable act and the victim’s injury.” Thompson v. State, 164 Idaho 821, 826, 436 P.3d 642, 647 (2019) (quotation marks omitted). The presence of methamphetamine in the victim’s system alone does not tend to show that the accident would not have occurred but for the victim’s methamphetamine use, nor does it tend to show that the victim would not have died as a result of the accident but for his methamphetamine use. The mere fact that the victim had methamphetamine in his system is not relevant to show that the causal chain between Ochoa’s failure to yield the right of way and the victim’s death has been broken. (See Appellant’s brief, pp. 12-18.)

Ochoa argues that the “victim’s use of a cocktail of illegal substances was an entirely independent act that could not have been reasonably foreseen by Ms. Ochoa,” but presents no explanation for how it breaks the causal chain between her culpable act and the victim’s death. (Respondent’s brief, pp. 8-10.) Her argument, at best, begs the question of how the “unforeseen” ingestion of a “cocktail of illegal substances” makes it less probable that Ochoa’s driving was a substantial cause of the victim’s death.

Ochoa's argument that evidence of the victim's toxicology screen shows an intervening or superseding cause of his death is, and remains, based on speculation. Evidence "that amounts to speculation or conjecture is not relevant and therefore not admissible." State v. Marks, 156 Idaho 559, 563, 328 P.3d 539, 543 (Ct. App. 2014). Ochoa argues that the issue of whether the evidence is speculative, as found by the magistrate, "is simply smoke and mirrors" because the presence of methamphetamine and other substances in the victim's blood is part of "the actual facts that existed." (Respondent's brief, pp. 10-11.<sup>2</sup>) The state does not dispute that the victim's blood test was positive for methamphetamine was an actual fact that existed. But not every actual fact that exists is relevant. The positive test result is causally tied to the victim's death with only the gossamer threads of speculation. A positive blood test is not *ipso facto* an intervening, superseding cause of death as Ochoa argues.

It was Ochoa's failure to yield that caused the accident which caused the massive internal bleeding that killed the victim. As set forth in the state's brief, Ochoa was allowed to present evidence of how the victim's *driving* might have been a cause of the accident, in an effort to negate the inference that Ochoa's failure to yield was a substantial cause of the victim's death. (Appellant's brief, pp. 17-18.) Ochoa has failed to show how the evidence of the victim's positive blood test for drugs adds anything relevant to the analysis of how

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<sup>2</sup> As Ochoa points out, the Trooper who investigated the crash concluded and put in his report that the victim was under the influence of methamphetamine because the toxicology report indicated 170 while the therapeutic range for methamphetamine was up to 100. (Respondent's brief, pp. 4, 10 (citing Exhibits, p. 97 (4/23/19 Tr., p. 93, L. 20 – p. 94, L. 19).) The Trooper also testified, however, that he was unable make a determination if the victim was impaired by that level of methamphetamine in his system. (Exhibits, p. 97 (4/23/19 Tr., p. 95, Ls. 2-10).) The claim that the victim was impaired by the methamphetamine in his system is speculative, and even if there was impairment the claim that said impairment was an intervening or superseding causation of death is speculative.

the victim's driving may or may not have been the cause of the accident, his injuries, and therefore his death. The mere presence of the drugs, without more, is not an intervening cause and therefore does not tend to negate the fact that Ochoa's driving was a substantial cause of the victim's death.

C. The Magistrate Did Not Abuse His Discretion By Excluding The Evidence Of The Victim's Toxicology Screening Because It Was Unfairly Prejudicial

Even if evidence is relevant, a court may exclude it "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, [or] misleading the jury." I.R.E. 403. As set forth in the state's initial brief, the magistrate did not abuse its discretion when it concluded that the toxicology evidence was so speculative that any probative value it might have had was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. (Appellant's brief, pp. 17-18.) The district court did not find any abuse of discretion, and therefore erroneously reversed. (Appellant's brief, pp. 17-18.)

Ochoa argues that the danger of unfair prejudice was minimal because society is very tolerant of methamphetamine use and the probative value of the evidence is high. (Respondent's brief, p. 11.) This argument fails for several reasons. First, it does not address the district court's error. Apparently Ochoa does not dispute the state's assertion that the district court erred by failing to address the magistrate's alternative ruling and failing to apply the relevant legal standards.

Second, Ochoa's argument also fails to address the relevant legal standards. Ochoa contends that the toxicology evidence is analogous to the state presenting autopsy or other evidence of the victim's death in a murder trial. The state fails to see how the presentation

of autopsy evidence or photographs of the victim's corpse invites speculation on whether the victim is dead in the same way that evidence of the victim's toxicology testing invites speculation that methamphetamine use caused the victim's death. Ochoa does not actually address the state's argument or the district court's ruling that the evidence would merely invite the jury to speculate how the methamphetamine use relates to the issues of the case.

Finally, even if Ochoa's analysis were in any way relevant to the magistrate's ruling, it does not show an abuse of discretion. As set forth above, she has failed to establish the relevance of the evidence, much less establish that it was "highly probative" of a superseding cause of death. Likewise, her estimation that the harm was minimal, because the public is tolerant of methamphetamine abuse, was hardly binding on the magistrate. The magistrate did not abuse its discretion by concluding that the danger of unfair prejudice, confusion of the issues, and misleading the jury substantially outweighed the probative value of the toxicology evidence. The district court erred when it reversed on appeal.

## II.

### The District Court Erred When It Concluded That The Trial Court Abused Its Discretion By Denying Ochoa's Motion For A Continuance

#### A. The Trial Court Correctly Determined That Any Prejudice From The Timing Of The Defense Obtaining Medical Records And The Toxicology Report Was The Product Of The Defense Delaying Its Request For Those Documents, Not The State's Tardiness In Responding To The Requests

As shown in the Appellant's brief and as found by the trial court, the defense, for strategic reasons,<sup>3</sup> delayed requesting discovery of the victim's medical records until

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<sup>3</sup> The strategic reason was to pursue exclusion of Dr. Groben as a witness. (Appellant's brief, pp. 4-8, 21-22.)

March 28, 2019, and the state produced the hospital records on April 10, 2019, and the toxicology report on May 7, 2019. (Appellant’s brief, pp. 4-8, 18-25.) The correct legal standard, applied by the magistrate, is to review whether the state’s tardiness in producing the evidence caused prejudice to the defense so substantial that the defense was denied a fair trial. See State v. Tapia, 127 Idaho 249, 255, 899 P.2d 959, 965 (1995); State v. Canelo, 129 Idaho 386, 389, 924 P.2d 1230, 1233 (Ct. App. 1996). In this case the magistrate properly concluded that any prejudice in the defense’s ability to prepare for trial based on the timing of the disclosures was not the state’s tardiness in production, but the defense’s tardiness in seeking the discovery. (Appellant’s brief, pp. 18-25.) The district court applied a legally erroneous standard on appeal when it concluded that the timing of the request for the medical records was irrelevant to whether a continuance should be granted and the only consideration was when, in relation to the trial, the documents were obtained. (Id.)

Ochoa has chosen to not respond to the state’s primary argument on appeal. (Respondent’s brief, pp. 12-15.) The state’s argument—that the magistrate properly denied the continuance motions because the timing of the production of the medical records and toxicology report arose from the defense’s tactical choice to delay making a discovery request for three months until the eve of trial, and not from any alleged tardiness in the state’s response to those requests, and that the district court erred by concluding that the timing of the discovery request was irrelevant to the trial court’s exercise of discretion in denying the continuance request was erroneous—stands un rebutted.

B. In The Alternative, Ochoa Has Failed To Show Any Prejudice At The Trial

The state also presents a secondary argument, that the district court's analysis of prejudice at trial is flawed by the same error the district court made in its analysis of the evidentiary issues: to wit, that it applied an incorrect relevance analysis based on the inapplicable standards of comparative negligence. (Appellant's brief, pp. 23-24.) Ochoa does respond to this argument, asserting generally that her trial preparation was prejudiced. (Respondent's brief, pp. 13-15.) Again, however, Ochoa does not claim the district court's application of comparative negligence standards was correct, only that the district court's ultimate conclusion that she was prejudiced was correct. (Respondent's brief, pp. 13-15.)

Ochoa's argument is ultimately that a court may determine prejudice in trial preparation by the expedient of a simple page count. Her argument that the documents are exculpatory and necessary for a fair trial are unsupported (and unsupportable) by any citation to evidence in the record. Appellate counsel's argument that as much time as possible to review these documents was necessary to adequately prepare for trial is severely undercut, or even belied, by trial counsel's decision to delay any efforts to obtain these documents for months. The magistrate did not abuse its discretion by concluding Ochoa was not entitled to more time to prepare for trial given how the time initially given had been spent. As the magistrate determined, a party may not force a continuance by electing to wait until the last minute to request documents it was aware existed from the beginning of the case. The district court erred, the magistrate did not abuse its discretion, and Ochoa's arguments are without merit.

III.  
The District Court Erroneously Found Dr. Groben’s Expert Testimony Based On Medical  
Records Inadmissible

A. Introduction

The magistrate applied the correct legal standards to the objection that Dr. Groben should not be allowed to disclose at trial the facts and data on which he relied to formulate his opinion. (Appellant’s brief, pp. 27-28.) The district court did not apply the correct legal standards to the appellate issue before it because it did not recognize the proper standard of review and did not defer to the trial court’s factual findings, instead substituting its own factual findings (which are contrary to the record). (Appellant’s brief, pp. 28-30.)

In responding to the state’s arguments Ochoa again does not dispute that the district court applied an incorrect legal standard, but contends the magistrate nevertheless erred. (Respondent’s brief, pp. 15-18.) Application of the relevant legal standards to the record shows no such error as claimed by Ochoa.

B. The Magistrate Did Not Abuse His Discretion By Allowing Dr. Groben To Testify Regarding The Facts And Data Underlying His Opinion

Dr. Groben testified that in his opinion as a pathologist the cause of the victim’s death was “blunt force trauma due to a motorcycle accident” and the “manner of death was accident.” (Exhibits, p. 162 (Tr., p. 353, L. 21 – p. 354, L. 3).) This opinion was based on the doctor’s expertise and training, an inspection of the victim’s body, and a review of the medical records. (Exhibits, pp. 153-56 (Tr., p. 318, L. 1 – p. 328, L. 8), 161 (Tr., p. 348, L. 16 – p. 349, L. 23).) None of this testimony was objected to, nor was it objectionable.

Over defense objection (Exhibits, pp. 156-60 (Tr., p. 328, L. 9 – p. 346, L. 19)), Dr. Groben was allowed to testify that the medical records he reviewed showed the victim had

died at the hospital (Exhibits, p. 161 (Tr., p. 349, Ls. 3-9)) and that the victim had suffered a collapsed lung on the right side, bruising, multiple bi-lateral and displaced rib fractures, pelvic fractures, and “tearing of the arteries” which caused “uncontrolled bleeding inside his pelvic cavity” (Exhibits, pp. 161-62 (Tr., p. 351, L. 11 – p. 352, L. 11)). The severing of the arteries caused “[u]ncontrolled bleeding and refractory hypotension,” which is blood loss so severe it results in loss of oxygen to the cells that cannot be reversed. (Exhibits, p. 162 (p. 352, L. 24 – p. 353, L. 16).)

The legal standard for admission of evidence of the facts and data relied upon by an expert in reaching an opinion is: “if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.” I.R.E. 703. The magistrate applied this standard to the hearsay objection and concluded that, although the testimony regarding the facts and data (as gleaned from the medical records) was otherwise inadmissible hearsay, the probative value of the evidence to help the jury evaluate the opinion substantially outweighed its prejudicial effect. (Exhibits, p. 160 (Tr., p. 345, L. 17 – p. 346, L. 19).)

The only legal authority Ochoa cites substantively<sup>4</sup> is State v. Watkins, 148 Idaho 418, 224 P.3d 485 (2009). (Respondent’s brief, pp. 17-18.) In that case the Supreme Court of Idaho held that “I.R.E. 703 serves to prevent an expert witness from serving as a conduit for the introduction of otherwise inadmissible evidence.” Id. at 427, 224 P.3d at 494. In that case the trial court did not “make a finding” that the challenged hearsay

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<sup>4</sup> Ochoa also sets forth the standard of review. (Respondent’s brief, pp. 15-16.)

evidence regarding DNA testing of various items was “admitted for the limited purpose of evaluating [the expert’s] opinion.” Id. Rather, the evidence in question was used for the improper purpose of “demonstrating the chain of custody, [another person’s] testing methodology, and to identify the locations on the condom and panties on which Watkins’ and the victim’s DNA were found.” Id. Watkins does not stand for the proposition that no hearsay may be admitted under I.R.E. 703—the rule itself applies to admission of “otherwise inadmissible” evidence—but rather for the proposition that the evidence must serve the limited purpose of helping the jury evaluate the expert’s opinion and even then is admissible only after the proper balancing has been performed.

In contrast to Watkins, the magistrate made the required finding that the “facts and datas [sic] as to the injuries that were sustained by [the victim] would help the jury to understand the cause of death.” (Exhibits, p. 160 (Tr., p. 346, Ls. 12-18).) The magistrate specifically distinguished Watkins on the basis that in that case the evidence was used to establish facts outside the scope of the expert opinion. (Exhibits, p. 160 (Tr., p. 345, L. 18 – p. 346, L. 12).) The record shows that the magistrate, unlike the court in Watkins, applied the proper standards and properly admitted the testimony.

Using some selective editing and quotes out of context, Ochoa contends Dr. Groben did not reach an independent conclusion as to the cause of the victim’s death, but instead merely recited what the treating doctors had concluded. (Respondent’s brief, pp. 16-17.) The parts of Dr. Groben’s testimony not mentioned or addressed by Ochoa include Dr. Groben’s testimony that “[m]edical records are absolutely important to determine—for me to determine what caused this person’s death,” and that looking at the medical records was important for *his* conclusion regarding the cause of death because the medical records were

“absolutely the best form of information [he] could get.” (Exhibits, p. 159 (Tr., p. 342, Ls. 15-17; p. 342, L. 24 – p. 343, L. 7) (emphasis added).) Dr. Groben then testified:

Q. But they [the medical records] didn’t determine his [the victim’s] cause of death?

A. No.

Q. You did?

A. Yes.

Q. Based on the injuries that he had when he was at the hospital?

A. Right.

(Exhibits, p. 159 (Tr., p. 343, Ls. 8-15) (bolding original).) Ochoa’s argument that Dr. Groben did not make an independent determination of the cause of the victim’s death but merely recited the cause found by others is meritless.

C. Any Error Was Harmless

Even if it was error to allow Dr. Groben to testify about the facts and data underlying his conclusion that the victim died as a result of the accident, any error was necessarily harmless because the evidence the victim died as a result of the accident is overwhelming and uncontradicted. (Appellant’s brief, p. 31.) Ochoa argues only that the district court found prejudice. (Respondent’s brief, p. 18.) For the reasons stated in the Appellant’s brief, any error was harmless.

CONCLUSION

The state respectfully requests this Court to reverse the district court and reinstate the judgment of the magistrate.

DATED this 21st day of July, 2020.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of July, 2020, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd