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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45586-2017
)	
v.)	KOOTENAI COUNTY NO.
)	CR 2016-16856
JOSEPH JOHN DAVIS,)	
)	APPELLANT'S 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 SCOTT WAYMAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Joseph John Davis appeals from his judgment of conviction for first-degree murder of his sixteen-month-old stepson, M.C. On appeal, he argues the district court abused its discretion by admitting irrelevant and prejudicial evidence of his premarital sexual relationship with M.C.'s mother and his alleged "sexual competition" with M.C.'s biological father. He also argues the State cannot show this error was harmless.

The State responded. The State argues the district court properly admitted the evidence, and the error was harmless. This Reply Brief addresses both claims.

Statement of the Facts and Course of Proceedings

Mr. Davis's Appellant's Brief articulated the facts and proceedings. (App. Br., pp.1-7.) They are not repeated here, but are incorporated by reference.

ISSUE

Did the district court abuse its discretion when it admitted irrelevant and prejudicial evidence of Mr. Davis's alleged "sexual competition" with M.C.'s biological father?

ARGUMENT

The District Court Abused Its Discretion When It Admitted Irrelevant And Prejudicial Evidence Of Mr. Davis's Alleged "Sexual Competition" With M.C.'s Biological Father

In his Appellant's Brief, Mr. Davis argued the district court abused its discretion when it admitted evidence of Mr. Davis's prior sexual relationship with Ms. Cheyney and his sexual competition with Mr. Wilburn. (App. Br., pp.9–21.) He asserted the district court did not apply the correct legal standards because this evidence was not relevant to any I.R.E. 404(b) exception or for any impeachment purpose. (App. Br., pp.10–21.)

The State does not dispute that this evidence falls under I.R.E. 404(b)'s definition of prior bad acts. (*See* Resp. Br., pp.6–17.) However, the State asserts this prior bad act evidence was relevant to prove Mr. Davis's motive to harm M.C. (Resp. Br., pp.9–12.) The State suggests: "Evidence that Davis's romantic relationship with Dacia [Cheyney] started and was maintained while Dacia was still involved with M.C.'s father, Antonio [Wilburn], has a tendency to make it more probable that Davis harbored resentment toward M.C. and thus had a motive to harm him." (Resp. Br., p.10.) The State's suggestion is wholly speculative and without merit. The State recognizes that there is "no *direct* evidence" of Mr. Davis's resentment or ill-will toward M.C. (Resp. Br., p.10.) Nonetheless, the State contends, without any evidence in support, that Mr. Davis's "sexual competition" with Mr. Wilburn has a "tendency" to make it more probable that Mr. Davis had a motive to harm M.C. (Resp. Br., p.11.) The State's contention could theoretically be true in a different case where there was any evidence, circumstantial or otherwise, to link the men's sexual competition with a motive to hurt M.C. But, here, there is nothing besides pure speculation to make that leap. The State needed to present something more than the mere fact of the "sexual competition" to allow an inference of Mr. Davis's desire to harm M.C.

Despite the State's claim that this evidence showed Mr. Davis's motive to harm M.C., the State then argues, on the balancing of probative value and prejudicial effect, that this same evidence "does not show a tendency to [commit] violence." (Resp. Br., p.13.) The State asserts there is minimal to no potential that the jury would have found that Mr. Davis's prior sexual relationship with the [REDACTED] Ms. Cheyney while she was pregnant with Mr. Wilburn's child established his violent character. (Resp. Br., p.14.) And, in the next sentence, the State continues that this evidence showed Mr. Davis resented or harbored animosity toward M.C.—but apparently that ill-will stopped short of acting upon it. (Resp. Br., p.14.) Yet, in the State's initial argument on relevancy, the State contended that this same evidence showed Mr. Davis's motive to harm M.C. (Resp. Br., pp.10–11.) So, according to the State, this prior bad act evidence had a "tendency" to show Mr. Davis had a motive to harm M.C., but also had no tendency to show Mr. Davis committed harm against M.C. These positions are incongruous. Motive is what leads or tempts the mind to commit the act. *State v. Stevens*, 93 Idaho 48, 53 (1969). If Mr. Davis's animosity toward M.C. was simply that, with no attendant desire to act on it, how does this evidence establish motive? The State cannot have it both ways.

With regard to the impeachment value of the evidence, Mr. Davis relies on his arguments as set forth in the Appellant's Brief. (App. Br., pp.19–20.) However, he notes that the State provides no justification for the mini-trial that ensued upon this purported impeachment objective. (*See* Resp. Br., p.12.) As Mr. Davis explained in his Appellant's Brief, the State sought to impeach Mr. Davis with not only Ms. Cheyney's testimony, but also the testimony of three additional witnesses. (App. Br., pp.19–20.)

Finally, the State has not met its burden to prove, beyond a reasonable doubt, that this evidentiary error was harmless. (Resp. Br., p.15.) Once again, the State recites its internally

inconsistent position that this evidence allowed for “no possibility” for the jury to find that Mr. Davis was violent. (Resp. Br., p.15.) The State also contends the only prejudicial effect could be the fact the Mr. Davis was having a sexual relationship with Ms. Cheyney while she was under eighteen. (Resp. Br., p.15.) The State concludes: “Although the jury could conceivably have thought less of Davis for not waiting a few months before beginning his sexual relationship with Dacia, it could not have concluded that he was therefore more likely to harm Dacia’s child.” (Resp. Br., p.15.) Besides disproving its own point on motive, the State ignores that the evidence of Mr. Davis’s past sexual relationship with Ms. Cheyney was part and parcel of the alleged sexual competition. Below, the State did not seek to admit Mr. Davis and Ms. Cheyney’s prior sexual relationship on its own. The State also presented that evidence to show Mr. Davis had a sexual relationship with Ms. Cheyney while she was pregnant with Mr. Wilburn’s child, and thus this “sexual competition” began. (*See App. Br.*, pp.11–15 (recitation of facts in district court).) The prejudice was more than the jury’s determination that Mr. Davis was of bad character by having sex with an underage girl. It was also the jury’s reliance on a wholly unsubstantiated, irrelevant motive to commit the offense. The State has not shown harmless error.

CONCLUSION

Mr. Davis respectfully requests that this Court vacate his judgment of conviction and remand his case for a new trial.

DATED this 6th day of January, 2021.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of January, 2021, I caused a true and correct copy of the foregoing APPELLANT’S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
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JCS/eas