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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47481-2019
)	
v.)	ADA COUNTY NO. CR01-19-10123
)	
JOHN HUEY DANIELS,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE THOMAS J. RYAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

During John Huey Daniels' jury trial for felony aggravated battery, Mr. Daniels cross-examined a detective about how Mr. Daniels had characterized the alleged victim. The detective answered that Mr. Daniels had characterized the alleged victim as a gang member, but also volunteered that Mr. Daniels identified himself as a former prison gang member. That voluntary statement came after voir dire had revealed that two members of the jury were current or former employees of the Idaho Department of Correction (IDOC). Mr. Daniels filed a motion for a mistrial based on the prejudice from the detective's volunteered statement, but the district court denied the motion for lack of prejudice and for invited error.

Mr. Daniels appeals, asserting the district court committed reversible error when it denied his motion for a mistrial. The detective's volunteered statement was not invited error, because the statement was nonresponsive. When viewed in the context of the full record, the detective's voluntary statement constituted reversible error.

In its Respondent's Brief, the State argues that Mr. Daniels has shown no error in the denial of his motion for a mistrial. (*See Resp. Br.*, pp.5-18.) This Reply Brief is necessary because the detective's volunteered statement was not invited error, the State has not accurately characterized Mr. Daniels' issue on appeal, and the State's arguments on preservation of issues for appeal are unavailing.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Daniels's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court commit reversible error when it denied Mr. Daniels' motion for a mistrial?

ARGUMENT

The District Court Committed Reversible Error When It Denied Mr. Daniels' Motion For A Mistrial

A. Introduction

Mr. Daniels asserts the district court committed reversible error when it denied his motion for a mistrial. Contrary to the district court's determination, Detective O'Gorman's volunteered statement that Mr. Daniels identified himself as a former member of the Aryan Knights was not invited error, because the statement was nonresponsive to defense counsel's question on Mr. Anderson's affiliations. When viewed in the context of the full record, Detective O'Gorman's statement constituted reversible error, despite the district court previously instructing the jurors not to share private or special knowledge with each other. It was extremely prejudicial to have the two jurors currently or formerly employed by IDOC learn that Mr. Daniels was a former prison gang member.

B. Detective O'Gorman's Volunteered Statement Was Not Invited Error, Because The Statement Was Nonresponsive

Contrary to the district court's determination, Detective O'Gorman's volunteered statement that Mr. Daniels identified himself as a former member of the Aryan Knights was not invited error, because the statement was nonresponsive to defense counsel's question on Mr. Anderson's affiliations. *See State v. Atkinson*, 124 Idaho 816, 821 (Ct. App. 1993), *rev. denied* (Jan. 6, 1994); *State v. Simonson*, 112 Idaho 451, 454 (Ct. App. 1987).

The State disputes Mr. Daniels' assertion that the volunteered statement was not invited error. (*See Resp. Br.*, pp.12-16.) The State argues that the record shows that Mr. Daniels' counsel did not limit his inquiry to only Mr. Anderson's gang affiliation, but counsel instead asked questions about Mr. Daniels' statement about his history with Mr. Anderson. (*See Resp.*

Br., pp.12-14.) However, defense counsel asked Detective O’Gorman, “There was some discussion in your—well, you wrote down in your police report about what John characterized Chris to be a member of something?” (Tr., p.313, Ls.19-21.) It is a stretch for the State to interpret that question, and the follow up questions of, “Are you familiar with what he was talking about?” and, “And what was that?”, as asking Detective O’Gorman to discuss more than Mr. Daniels’ characterization of Mr. Anderson as a member of something. (See Tr., p.313, L.19 – p.314, L.1.) Mr. Daniels’ counsel never asked the detective how Mr. Daniels characterized or identified himself.

The State also contends that the district court “found that ‘the *subject of a gang conflict* was brought up by the defense.’” (Resp. Br., p.15 (quoting Tr., p.341, L.23 – p.342, L.2).) However, defense counsel’s questions on the animosity between the SVC and the Aryan Knights followed Detective O’Gorman’s nonresponsive, volunteered statement that Mr. Daniels identified himself as a former member of the Aryan Knights. (See Tr., p.313, L.23 – p.314, L.19.) Thus, the district court’s finding that the defense brought up the subject of a gang conflict does not establish that Mr. Daniels invited the detective’s volunteered statement, because the volunteered statement preceded the questions on the gang conflict.

Because Detective O’Gorman’s volunteered statement that Mr. Daniels identified himself as a former Aryan Knights member was not responsive to the question asked by defense counsel, his statement was not invited error. See *Atkinson*, 124 Idaho at 821; *Simonson*, 112 Idaho at 454. The district court therefore erred when it denied Mr. Daniels’ motion for a mistrial on that basis.

C. Detective O’Gorman’s Volunteered Statement Constituted Reversible Error

When viewed in the context of the full record, Detective O’Gorman’s volunteered statement constituted reversible error, despite the district court previously instructing the jury not to share special knowledge with each other. *See State v. Johnson*, 163 Idaho 412, 421 (2018).

The State, in its Respondent’s Brief, has not accurately characterized the issue raised by Mr. Daniels. The State argues that the issue here, as presented before the district court, is “whether two jurors with a work history at IDOC would have inferred from the Aryan Knight evidence that [Mr.] Daniels had been a prison inmate, would have shared that inference with the rest of the jury, and that the jury thus would be unfairly prejudiced.” (*See Resp. Br.*, p.10.) However, Mr. Daniels actually asserted before the district court, “Both of these gangs are prison gangs. They’re well known in the prison. And so now that this has come to light about Mr. Daniels, these two jurors know that he’s either been to prison or is in prison.” (*Tr.*, p.336, L.17 – p.337, L.2.) Defense counsel explained, “And because of that, I’m moving for a mistrial.” (*Tr.*, p.337, L.2.)

Thus, although Mr. Daniels’ counsel did not correct the district court’s characterization of the issue as having to do with the two IDOC-related jurors passing their knowledge to the rest of the jurors, defense counsel framed the issue as pertaining to the knowledge of those two jurors in particular. (*See Tr.*, p.336, L.17 – p.337, L.2, p.340, Ls.13-21.) Likewise, Mr. Daniels on appeal asserted, “it is likely that the two jurors currently or formerly employed by IDOC considered Detective O’Gorman’s volunteered statement that Mr. Daniels identified himself as a former Aryan Knights member, meaning Mr. Daniels had been in a prison gang and in prison, while weighing the case.” (*App. Br.*, p.24.) The State has not accurately characterized the issue raised by Mr. Daniels.

Further, the State has made some unavailing arguments on preservation of issues for appeal. Specifically, the State argues that Mr. Daniels' assertion that the volunteered statement was inadmissible under Idaho Rule of Evidence 404(b) is not preserved for appeal. (*See App. Br.*, p.10.) However, "A party may refine issues that they have raised below with additional legal arguments so long as the substantive issue and the party's position on that issue remain the same." *Siercke v. Siercke*, 167 Idaho 709, ___, 476 P.3d 376, 382 (2020) (citing *Ada Cnty. Highway Dist. v. Brooke View, Inc.*, 162 Idaho 138, 142 n.2 (2017)). "A distinction exists between a refined issue, appropriate for review, and a new issue, unfit for consideration." *Id.* at ___, 476 P.3d at 383 (citing *State v. Gonzalez*, 165 Idaho 95, 98-99 (2019)).

Here, the assertion that the volunteered statement was inadmissible under Rule 404(b) is part of Mr. Daniels' refined issue that the district court erred when it denied his motion for a mistrial. Mr. Daniels requested a mistrial on the basis of Detective O'Gorman's volunteered statement and the two IDOC-related jurors' knowledge. (*See Tr.*, p.336, L.17 – p.337, L.2.) A motion for a mistrial must be based on "an error or legal defect in the proceedings, or conduct that is prejudicial to the defendant and deprives the defendant of a fair trial." *See I.C.R.* 29.1(a). Accordingly, the logical inference is that Mr. Daniels' counsel was asserting that the volunteered statement constituted such a requisite incident under Rule 29.1(a). It follows that the basis for why the volunteered statement constituted a requisite incident was the statement's inadmissibility under Rule 404(b), and its highly prejudicial nature as evidence of gang affiliation. Thus, the assertion that the volunteered statement was inadmissible under Rule 404(b) is part of Mr. Daniels' refined issue, appropriate for review by this Court. *See Siercke*, 167 Idaho at ___, 476 P.3d at 382-83.

Additionally, the State argues that Mr. Daniels' assertion that the jury instruction on sharing special knowledge did not prevent any prejudice, because the jurors were also given an instruction that they could rely on their own experience in making credibility determination, is not preserved for appeal. (*See* Resp. Br., p.11.) Mr. Daniels asserted on appeal that, if the two jurors currently or formerly employed by IDOC followed the jury instruction to not communicate any private or special knowledge to the jurors, they would have also followed the instruction to use their life experiences when evaluating testimony. (App. Br., p.24.)

That assertion is another refinement of Mr. Daniels' issue as raised before the district court. As discussed above, defense counsel expressed specific concerns about the two IDOC-related jurors and their knowledge that Mr. Daniels was in prison or had been to prison. (*See* Tr., p.336, L.17 – p.337, L.2.) The assertion on appeal regarding the jury instruction inviting jurors to use their life experiences is an evolution of Mr. Daniel's position before the district court that the volunteered statement and the two jurors' knowledge mandated a mistrial. The assertion is therefore part of Mr. Daniels' refined issue, appropriate for review. *See Siercke*, 167 Idaho at ___, 476 P.3d at 382-83.

When viewed in the context of the full record, Detective O'Gorman's volunteered statement constituted reversible error. *See Johnson*, 163 Idaho at 421. The district court committed reversible error when it denied Mr. Daniels' motion for a mistrial. Accordingly, this Court should vacate the district court's order denying the motion for a mistrial and Mr. Daniels' judgment of conviction, and remand this matter for further proceedings.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Daniels respectfully requests that this Court vacate the district court's order denying the motion for a mistrial and his judgment of conviction, and remand this matter for further proceedings.

DATED this 10th day of February, 2021.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 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
EVAN A. SMITH
Administrative Assistant

BPM/eas