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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47546-2019
)	
v.)	CANYON COUNTY NO. CR14-18-19624
)	
JUAN MANUEL)	REPLY BRIEF
MENCHACA OLVERA,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

**HONORABLE GEORGE A. SOUTHWORTH
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

After R.G. lost his life in a shooting, the State charged Juan Manuel Menchaca Olvera for R.G.'s murder. The matter went to a jury trial, where the jury convicted Juan of first degree murder and robbery. In this appeal, Juan asserts: (1) the district court erred when it denied his motion to suppress, because the lead investigator took his statements in violation of his Fifth Amendment right to remain silent; (2) the district court committed reversible error when it declined to declare a mistrial, after a witness testified Juan had committed a prior act of theft against R.G.; and (3) the district court abused its discretion when it denied Juan's motion to dismiss based on prosecutorial misconduct, in light of the prosecutor's inflammatory comments during closing argument rebuttal. Juan also asserts that, even if the above trial errors were individually harmless, his Fourteenth Amendment right to due process of law was violated because the accumulation of errors deprived him of his right to a fair trial.

In its Respondent's Brief, the State argues: (1) Juan has not shown that the district court erred by declining to suppress statements made in his interviews with the lead investigator; (2) Juan has not shown that the district court erred by declining to order a mistrial after a witness testified that he stole money from R.G.; and (3) Juan has not shown that the district court abused its discretion by declining to dismiss the charges with prejudice after alleged prosecutorial misconduct during rebuttal closing. (*See Resp. Br.*, pp.15-49.) The State also contends that the cumulative error doctrine has no application in this case. (*See Resp. Br.*, pp.49-51.)

This Reply Brief is necessary to address certain arguments by the State, to include Juan withdrawing the prosecutorial misconduct and cumulative error issues.

Statement of Facts and Course of Proceedings

Juan articulated the relevant facts and proceedings in the Appellant's Brief. They are not repeated here, but are incorporated by reference.

ISSUES

- I. Did the district court err when it denied Juan's motion to suppress, because Detective Seibel took his statements in violation of his Fifth Amendment right to remain silent?
- II. Did the district court commit reversible error when it declined to declare a mistrial, after B.C. testified Juan had committed a prior act of theft against R.G.?
- III. Did the district court abuse its discretion when it denied Juan's motion to dismiss based on prosecutorial misconduct, in light of the prosecutor's inflammatory comments during closing argument rebuttal?
- IV. Even if the above trial errors were individually harmless, was Juan's Fourteenth Amendment right to due process of law violated because the accumulation of errors deprived him of his right to a fair trial?

ARGUMENT

I.

The District Court Erred When It Denied Juan's Motion To Suppress, Because Detective Seibel Took His Statements In Violation Of His Fifth Amendment Right To Remain Silent

Juan asserts that the district court erred when it denied his motion to suppress, because Detective Seibel, the lead investigator, took his incriminating statements in violation of his Fifth Amendment right to remain silent. Under the totality of the circumstances here, Juan's waiver of his right to remain silent was not knowing, intelligent, or voluntary. *See, e.g., Moran v. Burbine*, 475 U.S. 412, 420-21 (1986); *Miranda v. Arizona*, 384 U.S. 436, 467-70 (1966). During the first interview, Juan did not sign the *Miranda* form to indicate that he understood his rights. (*See R.*, pp.116, 123.) Contrary to the district court's determination, Juan's later response of "Okay" to Detective Siebel's question after advising him again of the *Miranda* rights was not an explicit affirmation that he understood his *Miranda* rights, considering the detective did not reiterate all of the *Miranda* rights before he responded. (*See R.*, pp.76, 115, 123-24.) Juan was [REDACTED] years old and possibly under the influence of drugs during the first interview, which lasted about three hours. (*See R.*, pp.116, 118, 124, 128.) The evidence indicates that Juan is of below-average intelligence. (*See R.*, p.118.) Further, over the course of the interviews, Detective Seibel was inconsistent regarding whether Juan could have a parent present. (*See R.*, pp.77, 116, 124-25.)

The State argues that the district court's finding that Juan knowingly, intelligently, and voluntarily waived his right to remain silent is supported by substantial and competent evidence. (*See Resp. Br.*, pp.18-26.) The State's argument is unremarkable, and no further reply is necessary. Thus, Juan would direct the Court's attention to pages 13-21 of the Appellant's Brief.

II.

The District Court Committed Reversible Error When It Declined To Declare A Mistrial After B.C. Testified Juan Had Committed A Prior Act Of Theft Against R.G.

A. Introduction

Juan asserts the district court committed reversible error when it declined to declare a mistrial, after B.C. testified Juan had committed a prior act of theft against R.G. Her testimony that Juan told her he had stolen money from R.G. before was inadmissible other acts evidence under Idaho Rule of Evidence 404(b). When viewed in the context of the full record, B.C.'s testimony constituted reversible error, despite the district court striking the testimony and providing a curative instruction, because of the testimony's high prejudicial effect as propensity evidence. Further, the rest of the State's evidence on the murder charge was weak. Thus, the district court committed reversible error when it declined to declare a mistrial after B.C. testified Juan had committed a prior act of theft against R.G.

B. B.C.'s Testimony That Juan Told Her He Had Once Taken Money From R.G. Was Inadmissible Other Acts Evidence Under Rule 404(b)

B.C.'s testimony that Juan told her he had once taken money from R.G. was inadmissible other acts evidence. *See* I.R.E. 404(b); *State v. Sheldon*, 145 Idaho 225, 230 (2008). The district court implicitly recognized this when it struck the testimony from the record and instructed the jury to ignore the testimony. (*See* Tr., p.542, L.22 – p.544, L.5.) However, the district court's actions did not go far enough.

The State contends that this Court may affirm the district court's determination not to declare a mistrial for the alternative reason that B.C.'s testimony was admissible. (*See* Resp. Br., p.30 (citing *State v. Garcia-Rodriguez*, 162 Idaho 271, 275-76 (2017))). Disagreeing with

the district court's implicit determination, the State argues that B.C.'s testimony did not implicate Rule 404(b) and was admissible as direct evidence of the offense. (*See Resp. Br.*, pp.28-30.) The district court properly rejected this argument when the State previously made it. (*See Tr.*, p.540, L.18 – p.543, L.13.) B.C. testified that she was not sure if Juan had taken money from R.G. while he was sleeping on the day of the shooting, and that Juan did not specify which day he had taken money from R.G. (*See Tr.*, p.538, L.25 – p.539, L.4.) During voir dire examination outside the presence of the jury, B.C. clarified that she was not sure when Juan took the money, but she did not think he stole it that day. (*See Tr.*, p.541, L.14 – p.542, L.20.) The district court determined that B.C.'s "recollection at least as she stated here is that he made the statement he stole it some days before this." (*Tr.*, p.543, Ls.10-13.)

The State attempts to equate B.C.'s testimony with the evidence at issue in *State v. Pullin*, 152 Idaho 82, 87 (Ct. App. 2011). (*See Resp. Br.*, pp.29-30.) The defendant in *Pullin* had been convicted of possession of methamphetamine, and on appeal asserted that drugs and paraphernalia found in the vehicle he had been seen driving constituted Rule 404(b) evidence. *See Pullin*, 152 Idaho at 84, 86. The Idaho Court of Appeals held that "the evidence found inside of the car was not evidence of prior crime, wrong, or other act, but was merely part of the same criminal episode." *Id.* at 87. The *Pullin* Court held that the search of the vehicle was part of the search incident to arrest and happened directly after the search of the defendant's person, and "[t]he evidence found in the vehicle was physical, circumstantial evidence that was inextricably intertwined with evidence of the crime of possession of methamphetamine." *Id.* Thus, the evidence at issue in *Pullin* did not fall within the scope of Rule 404(b). *See id.*

Despite the State's attempt to equate B.C.'s testimony with the drugs and paraphernalia evidence in *Pullin*, B.C.'s testimony is actually akin to the statements of past drug dealing in

Sheldon, which the Idaho Supreme Court held were Rule 404(b) evidence of other acts. *See Sheldon*, 145 Idaho at 229-30. The defendant in *Sheldon* had been convicted of trafficking in methamphetamine. *See id.* at 226. On appeal, the defendant asserted that the district court erred when it admitted testimony that he had admitted to dealing drugs in the past, without the State providing the requisite Rule 404(b) notice. *See id.* at 229. The Idaho Supreme Court agreed, holding that, “Since methamphetamine dealing is prohibited under I.C. § 37-2732B(a) . . . his admission would be categorized as 404(b) evidence.” *Id.* at 229. The *Sheldon* Court next held that the district court erred in admitting the testimony because the State had not complied with the notice requirements of Rule 404(b), and the error was not harmless. *See id.* at 229-30.

Much like the testimony on the defendant’s statements that he had dealt drugs in the past in *Sheldon*, B.C.’s testimony that Juan told her he had once taken money from R.G. was Rule 404(b) other acts evidence. B.C. did not think that Juan stole the money from R.G. that day, meaning the evidence indicates the taking of the money happened before the instant offenses. (*See Tr.*, p.541, L.14 – p.542, L.20.) The State did not provide the requisite Rule 404(b) notice for B.C.’s testimony on Juan’s prior act of theft. (*See Tr.*, p.539, Ls.19-25.) Thus, B.C.’s testimony that Juan told her he had once taken money from R.G. was inadmissible other acts evidence under Rule 404(b). The State has not shown that B.C.’s testimony was instead admissible direct evidence of the offense charged.

C. B.C.’s Testimony Constituted Reversible Error

When viewed in the context of the full record, B.C.’s testimony constituted reversible error, despite the district court striking the answer and providing a curative instruction. The district court’s corrective actions did not cure the prejudice from B.C.’s testimony, which injected propensity evidence into the trial. *See State v. Grist*, 147 Idaho 49, 52 (2008); *State v.*

Wrenn, 99 Idaho 506, 510 (1978). The rest of the State’s evidence on murder was weak. B.C.’s testimony created a high risk that the jury would convict Juan based on his prior criminal act, rather than the evidence presented at trial concerning the alleged murder and robbery. Thus, when viewed in the context of the full record, B.C.’s testimony constituted reversible error. *See State v. Johnson*, 163 Idaho 412, 421 (2018).

The State contends, “Assuming *arguendo* that B.C. testified regarding some uncharged criminal conduct, that testimony had little to no prejudicial impact,” and “there is no reason to believe, much less an overwhelming probability, that the jury would be unable to follow the district court’s instruction, and no reason to believe, much less a strong likelihood, that the testimony was devastating to [Juan].” (Resp. Br., p.31.) In support of this argument, the State claims that “B.C’s testimony had *nothing* to do with the murder charge, could not possibly be judged to be ‘devastating’ with respect to that charge,” and “her testimony contributed little to nothing to the temptation” to infer from the proposition that Juan engaged in criminal conduct to the proposition that he murdered R.G. (*See* Resp. Br., p.33.)

However, B.C.’s testimony did deal with the murder charge, because “[t]he prejudicial effect of [character] evidence is that it induces the jury to believe the accused is more likely to have committed the crime on trial because he is a man of criminal character.” *See Grist*, 147 Idaho at 52. As the United States Supreme Court put it when analyzing Federal Rule of Evidence 404(b), the federal analogue to Rule 404(b), one improper basis for decision is “generalizing a defendant’s earlier bad act into bad character and taking that as raising the odds that he did the later bad act now charged (or worse, as calling for preventive conviction even if he should happen to be innocent momentarily).” *Old Chief v. United States*, 519 U.S. 172, 180-81 (1997). The State may not present prior bad acts as propensity evidence because character “is

said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.” *See id.* at 181 (quoting *Michelson v. United States*, 335 U.S. 469, 475-76 (1948)). Thus, injecting propensity evidence like B.C.’s testimony into the trial did deal with the murder charge.

On the strength of the evidence, the State argues that Kurt Bates testified that R.G. owned a 9mm firearm, and that the evidence suggested that Juan had stolen the 9mm. (*See Resp. Br.*, pp.36-37.) However, Mr. Bates really testified on redirect examination that R.G., alongside the .380 which R.G. reported had been taken (as discussed in cross-examination), owned three other guns including the 9mm. (*See Tr.*, p.402, L.17 – p.406, L.7.) Mr. Bates also testified that he could not tell the difference between a 9mm and a .380. (*Tr.*, p.407, Ls.22-24.) Moreover, on recross-examination, Mr. Bates testified that R.G. never said, “He took my 9 millimeter,” but R.G. had said, “He took my .380.” (*Tr.*, p.408, Ls.10-14.)

When viewed in the context of the full record, B.C.’s testimony constituted reversible error. *See Johnson*, 163 Idaho at 421. The district court committed reversible error when it declined to declare a mistrial. Juan’s judgment of conviction, and the order declining to declare a mistrial, should be vacated.

III.

Juan Withdraws The Prosecutorial Misconduct Issue

In the Appellant’s Brief, Juan asserted that the district court abused its discretion when it denied his motion to dismiss based on prosecutorial misconduct, in light of the prosecutor’s inflammatory comments during closing argument rebuttal. As the State has noted (*see Resp. Br.*, pp.40-41), the Idaho Supreme Court has held that, by the plain language of Idaho Criminal Rule 48, “[a]n order for dismissal is not a bar [to any other prosecution] if the offense is a

felony.” *State v. Roth*, 166 Idaho 281, ___, 458 P.3d 150, 153 (2020) (quoting I.C.R. 48(c)) (internal quotation marks omitted). “Thus, the dismissal and refilling are not prohibited either by the statutes or the criminal rules of this state.” *Id.*, 458 P.3d at 153 (quoting *Stockwell v. State*, 98 Idaho 797, 803 (1977)) (internal quotation marks omitted). “Use of the rule is thus misdirected once a jury has been empaneled and it cannot be the source for a dismissal after jeopardy has attached.” *Id.*, 458 P.3d at 153.

The State therefore argues that “the district court could not lawfully have granted” dismissal of the case with prejudice for prosecutorial misconduct under Rule 48. (*See Resp. Br.*, pp.40-41.) This point by the State is well-taken. Accordingly, considering Juan on appeal invoked Rule 48 as the basis for dismissing the case for prosecutorial misconduct, Juan now withdraws the prosecutorial misconduct issue.

IV.

Juan Withdraws The Cumulative Error Issue

Juan asserted that if the Court finds that the above trial errors were individually harmless, the district court’s errors combined amount to cumulative error. “However, a necessary predicate to the application of the [cumulative error] doctrine is a finding of more than one error.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (internal quotation marks omitted). Thus, in view of the withdrawal of the prosecutorial misconduct issue, Juan now withdraws the cumulative error issue.

CONCLUSION

For the above reasons, Juan respectfully requests that this Court vacate his judgment of conviction and the order denying his motion to suppress, and remand the matter to the district court with instruction to grant his motion to suppress. Alternatively, Juan respectfully requests that this Court vacate his judgment of conviction and the order declining to declare a mistrial, and remand the matter for further proceedings.

DATED this 22nd day of April, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 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