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State v. Rodriguez Respondent's Brief Dckt. 48067

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48067-2020**
Plaintiff-Respondent,	)	
	)	**Canyon County Case No.**
v.	)	**CR14-19-19593**
	)	
LARS CHRISTOPHER RODRIGUEZ,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Lars Christopher Rodriguez appeals from his judgment of conviction for felony DUI. He challenges the admission of testimony that he had been previously convicted of a felony under I.R.E. 609.

Statement Of The Facts And Course Of The Proceedings

The following facts are based on testimony presented at Rodriguez's jury trial. On the evening of September 29, 2019, Nikita Trinidad and her daughter were riding in a car in Caldwell when the driver, Nakita's boyfriend (Anthony Renteria), exclaimed "look at this fool coming up on us so fast." (Tr., p.154, L.12 – p.155, L.24; p.159, 4-5.) Nakita looked up and, through the outside rear view mirror, saw a red truck coming at them "full speed" after they had just stopped for a red light, and the truck swerved around them as it remained red.[1] (Tr., p.155, L.24 – p.156, L.9.) Nakita explained that after the red truck swerved around them, "he went back into our lane, and as the light was green he T-boned the other car [a white Pizza Hut delivery car] right in front of us" in the middle of the intersection. (Tr., p.157, L.19 – p.158, L.5.) The white car flipped around and "got smashed real bad," and the red truck "went up onto the curb and hit right into the fire hydrant" in the Walgreen's parking lot. (Tr., p.158, Ls.6-17.) Nakita had noticed that the driver of the white car had his head "go limp" and she told Anthony to turn in to make sure he was okay. (Tr., p.158, L.8 – p.159, L.3.) Anthony drove around the red truck and into the entrance of a Walgreen's parking lot, and parked "like less than four feet away" from it, and having never lost sight of the truck during this whole time, Nakita saw only one person get out of the truck, when

[1] Nikita's car was the only car stopped for the light, and it was in the right lane of a two-lane one way street. (Tr., p.156, Ls.10-17.)

Rodriguez got out from the driver's side of the truck. (Tr., p.159, L.7 – p.160, L.13.) When Nakita saw Rodriguez get out of the truck, she had been "going to run to go help the Pizza Hut guy," but she and Anthony heard Rodriguez "revving up his engine, but he was stuck," and Anthony said, "He's going to run." (Tr., p.160, L.18 – p.161, L.3.) Nakita was "right there" as she looked into the truck through the passenger side window and could see Rodriguez sitting in the truck, and "[n]obody was sitting in the passenger" seat. (Tr., p.161, Ls.4-21.) Rodriguez took off running across the street and Nakita was going to run after him but Anthony told her not to because they did not know if he "might have a gun or something." (Tr., p.162, Ls.17-25.) When Nakita got to the corner of the block she called the police. (Tr., p.162, Ls.6-8.) Nakita got back in the car with Anthony and they followed Rodriquez as he ran, ending up at Los Betos, where he stopped not long to talk to an employee. (Tr., p.163, L.2 – p.164, L.17.) Nakita recalled that Rodriguez was wearing dark jeans, a gray shirt, and a black hat that had a "one-by-one-inch emblem or a picture of something." (Tr., p.164, Ls.18-25.)

Rodriguez finished talking to the people by Los Betos, he was "kind of like sprinting," trying "to get away quicker. (Tr., p.165, Ls.1-5.) Nakita and Anthony continued to follow Rodriguez in their vehicle as he passed by a construction site, past a bank, and ended up in Indian Creek Plaza. (Tr., p.165, L.11 – p.167, L.8.) When he entered the plaza, Rodriguez "walked up to a table, and he just started talking to these two individuals like for a split second, and then not even like two seconds later he sat down with them like if he had been there the whole time." (Tr., p.167, Ls.9-15.) Nakita and Anthony were in their car, parked right across from Rodriguez and they never lost sight of him from the bank until he sat down at Indian Creek Plaza. (Tr., p.167, L.6 - p.168, L.2.) Nakita was talking to the police by phone from the time they got to the corner

of the Walgreen's parking lot and had described what Rodriquez was wearing and that they would not lose sight of him – and they did not.[2] (Tr., p.168, Ls.3-18.)

Nakita watched as police cars kept passing by "like they don't know he's sitting there[,]" so she kept telling the dispatcher where Rodriguez was sitting, and finally got out of the car, hid against a wall, waved an officer down, and pointed out where Rodriquez was sitting and told him that "he just sat down there like if he had been there." (Tr., p.168, L.22 - p.169, L.14.)

Anthony also testified, confirming the basic facts of Nakita's testimony (see generally Tr., p.183, L.3 – p.201, L.15), including that there was only one person in the red truck, and "[t]hey were in the driver's seat trying to get out" following the accident (Tr., p.188, Ls.15-25; see id., p.194, Ls.3-7; p.197, L. 23 – p.198, L.4). Anthony also answered "[n]o" when asked, "[s]o from the point of the crash to the point where he sat down at Indian Creek Plaza at the table, did you lose sight of him?" (Tr., p.193, L.24 - p.194, L.2.) Finally, Anthony explained that he observed the officer catch up with Rodriguez and confront him. (Tr., p.194, Ls.8-11.)

Corporal Jeff Jensen of the Caldwell Police Department testified that on September 29, 2019, he went to the Indian Creek Plaza to look for "a suspect that had ran from a crash." (Tr., p.207, L.16 – p.208, L.5.) Corporal Jensen had received information that there was "a crash at 10th and Cleveland, and the driver of a red truck had fled from the scene[,]" described as "a Hispanic male in his 30s wearing a gray shirt, black hat, and possibly wearing blue jeans." (Tr., p.208, Ls.6-19.) Corporal Jensen got out of his patrol car to search for the suspect, but returned after being informed that he may have been running from the plaza. (Tr., p.209, Ls.18-22.) When he got into his patrol car, "the people that were relaying this information to dispatch flagged [him]

[2] On cross-examination, Nakita acknowledged that there was "one little spot when [Rodriguez] went behind Keystone where [she] couldn't see him, but it was very short term." (Tr., p.179, L.23 – p.180, L.1.)

down" and told him that the person he was looking for was sitting at the first table in the plaza. (Tr., p.209, L.24 – p.210, L.7.) The people reporting the suspect's location gave a description of the suspect which matched the information dispatch had given the officer. (Tr., p.210, Ls.17-23.)

Corporal Jensen walked to where Rodriguez was sitting, noticed his clothes fit the description of the suspect's clothing, and twice commanded him to stand up. (Tr., p.211, Ls.3-6.) Rodriguez ignored the commands, so the officer grabbed his arm and, despite Rodriguez's non-cooperation, was able to place him in handcuffs and detain him. (Tr., p.211, L.7 – p.212, L.11.) Corporal Jensen asked the people sitting at the table if they knew Rodriguez, and they shook their heads "no" and Rodriquez also stated that they did not know him. (Tr., p.212, Ls.14-23.) The officer walked Rodriguez to his patrol car and asked him about the crash, and Rodriguez "responded by telling [the officer] that they hit me." (Tr., p.212, L.24 – p.213, L.7.) Rodriguez verbally identified himself as "Lars Rodriguez," and the officer searched him and put him in the back of the patrol car. (Tr., p.213, Ls.14-17.)

As Rodriguez spoke, Corporal Jensen noticed that he had a strong odor of alcohol (or alcoholic beverage), his eyes were bloodshot and glassy, and his speech was slurred, indicating possible alcohol impairment. (Tr., p.213, Ls.18-25.) Rodriguez refused to perform field sobriety tests – the horizontal gaze nystagmus, the walk-and-turn test, and the one-legged stand test – and also refused to take a breath test by "talking nonsense and just delaying the whole process." (Tr., p.214, L.4 - p.216, L.10.) Corporal Jensen took Rodriguez to the police department and obtained a search warrant to conduct a blood draw, which was done at that location by Officer Heaton. (Tr., p.216, L.11 – p.217, L.3.) The lab report showing that Rodriguez's blood alcohol concentration was ".219 grams of ethyl alcohol per 100 cc's of blood" was admitted into evidence without objection. (Tr., p.217, L.8 - p.218, L.13; see St. Ex. 1.) Also, the recording taken by Corporal

Jensen's body cam that day was admitted into evidence without objection. (Tr., p.218, L.25 – p.219, L.17; see St. Ex. 2.)

Caldwell Police Officer Max Boots testified that he was the first officer to arrive at the scene of the accident, and that the red truck registered to Lars Rodriguez was partly in the roadway, but most of the truck was up on the grass shoulder. (Tr., p.229, L.14 – p.231, L.25; p.236, Ls.8-23.) Officer Boots checked on the people involved in the crash – the driver of the white car refused medical treatment and did not appear to have been injured much – and then began his crash investigation. (Tr., p.232, Ls.1-16.) Officer Boots reviewed the "skid marks, the marks left by the truck, the rapid travel that the truck took" and that "those marks went right over the fire hydrant[,]" indicating that it was the red truck that hit the fire hydrant. (Tr., p.231, Ls.16-21.) Officer Boots was the first officer to approach the red truck, and when he did, he noticed the driver's side door was open about three or four inches, and the passenger side door was closed. (Tr., p.234, Ls. 5-23.) Inside the truck, behind the driver's seat, the officer found a can of a Monaco alcoholic beverage with trace amounts of liquid inside, and a tequila bottle that had a little bit of liquid inside. (Tr., p.235, L.6 – p.236, L.7; see St. Exs. 7, 8.)

After the state rested, Rodriguez's counsel made an oral motion to exclude testimony about Rodriguez's three prior felony convictions – two felony DUIs and one felony eluding a police officer. (Tr., p.247, L.13 – p.249, L.4.) The district court ruled that the fact that Rodriguez has been convicted of one felony (a 2017 conviction for felony DUI) was admissible under I.R.E. 609(a), but not the specific offense. (Tr., p. 251, L.20 – p.253, L.11.)

Rodriguez testified that his roommate – who he refused to name – was driving the red truck when it crashed, and he (Rodriguez) got out of the truck through the passenger side door. (Tr., p.261, Ls.15–17; p.263, L.17 – p.264, L.15; p.267, Ls.5-8; p.278, Ls.3-9.) Rodriguez testified that

he told the driver to park the truck and "we'll run on our feet." (Tr., p.266, Ls. 6-7.) He admitted that he noticed Nakita and Anthony and he fast-walked to the front of Los Betos "looking back at them." (Tr., p. 269, Ls.4-11.) As he continued to run, Rodriguez threw a marijuana pipe into a dumpster and made his way to the plaza. (Tr., p.269, L.23 – p.270, L.3.) Rodriguez confirmed that once he made it to Indian Creek Plaza, he tried to blend in by sitting down with people he did not know until he was apprehended by Corporal Jensen. (Tr., p.281, Ls.3-11.) At the end of his testimony, the prosecutor asked, "Mr. Rodriguez, you've previously been convicted of a felony, Right?" (Tr., p.283, Ls.21-22.) Rodriguez answered, "Yes, sir, I have." (Tr., p.283, L.23.)

The state charged Rodriguez in Part I of an Information with felony DUI (second felony DUI within 15 years), leaving the scene of an accident involving an attended vehicle (misdemeanor), failure to notify upon striking fixtures on a highway (misdemeanor), and possession of an open container in a vehicle. (R., pp.24-27.) Part II of the Information alleged that Rodriguez had been convicted in 2014 and 2017 of felony DUI, and Part III of the Information accused him of being a persistent violator. (R., pp.28-33.) At trial, after a jury convicted Rodriguez of all four charges, Rodriguez admitted he had been convicted of two prior felony DUIs and that he was a persistent violator. (R., pp.60-61; Tr. p.332, L.19 - 341, L.7.) Rodriguez filed a motion for a new trial alleging newly discovered evidence, which the district court denied after a hearing. (R., pp.63-66, 92-93; see generally Tr. p.349, L.1 – p.370, L.25.)

The district court sentenced Rodriguez to a unified sentence of 26 years, with six years fixed, for felony DUI, and six months jail (concurrent) on each of the three misdemeanors. (R., pp.104-110; Tr., p.413, L.20 – p.416, L.18.) Rodriguez filed a timely notice of appeal. (R., pp. 111-115.)

ISSUE

Rodriguez states the issue on appeal as:

> Did the district court abuse its discretion by admitting evidence of the fact of Mr. Rodriguez's prior felony conviction to show untruthfulness when the nature of the conviction had no bearing on that character trait?

(Appellant's brief, p.6.)

The state rephrases the issue as:

Did the district court's denial of Rodriguez's motion to preclude the state from introducing evidence of a prior felony conviction constitute harmless error?

ARGUMENT

The District Court's Denial Of Rodriguez's Motion To Preclude The State From Introducing Evidence Of A Prior Felony Conviction Constituted Harmless Error

A. Introduction

The district court permitted the state to ask Rodriguez, with regard to a 2017 felony DUI conviction, whether he had "been previously convicted of a felony[,]" but not to mention the specific nature of that felony. (Tr., p.251, L.20 – p.253, L.11.) On appeal, as he did below, Rodriguez argues that, under I.R.E. 609, the district court improperly allowed the state to "present evidence of the fact of his prior felony conviction to show a character for untruthfulness." (Appellant's brief, p.7; see Tr., p.247, L.13 – p.249, L.4.) He contends that "[t]he category of the conviction, not the mere fact of one, controls whether the prior conviction is relevant to show a person's untruthful character." (Id.) It appears that, contrary to what little Idaho law there is on the issue, the district court based its "truthfulness" ruling on the fact that Rodriguez had a prior felony conviction, not that the prior conviction itself was relevant to his truthfulness. However, any error was, beyond a reasonable doubt, harmless.

B. Standard Of Review

This Court reviews challenges to a trial court's evidentiary rulings under the abuse of discretion standard." Perry v. Magic Valley Reg'l Med. Ctr., 134 Idaho 46, 50, 995 P.2d 816, 820 (2000). "Trial courts maintain broad discretion in admitting and excluding evidence." State v. Weigle, 165 Idaho 482, 487, 447 P.3d 930, 935 (2019). An exception to this broad discretion is relevance, which is "a matter of law that is subject to free review." State v. Hall, 163 Idaho 744, 774, 419 P.3d 1042, 1072 (2018).

C. The District Court's Ruling Constituted Harmless Error

To determine admissibility of evidence of prior convictions, the court should first look to which of three categories the crime falls. State v. Grist, 152 Idaho 786, 789, 275 P.3d 12, 15 (Ct. App. 2012). The first category are crimes "intimately connected to a person's veracity and credibility" such as perjury. Id. The second category includes crimes "somewhat less relevant to credibility because they do not deal directly with veracity and have only a general relationship with honesty" such as robbery or burglary. Id. The third category is for crimes that "have little or no direct bearing on honesty and veracity" such as "crimes of passion and acts of violence that are the product of emotional impulse." Id. Determining which category a prior conviction falls is resolved on a case-by-case basis involving an "examination of the statute under which the conviction occurred." State v. Muraco, 132 Idaho 130, 133, 968 P.2d 225, 228 (1998). Evidence of crimes not directly related to veracity are relevant if those crimes "disclose a disregard for the rights of others which might reasonably be expected to express itself in giving false testimony whenever it would be to the advantage of the witness." State v. Rodgers, 119 Idaho 1066, 1072, 812 P.2d 1227, 1233 (Ct. App. 1990) (quotation marks omitted).

In ruling on Rodriguez's oral motion to preclude the prosecutor from asking Rodriguez, under I.R.E. 609(a), whether he had been convicted of a prior felony, the district court said:

> So turning to the first felony. That's the 2017 driving under the influence conviction. That – going through the rule here the fact of the conviction is relevant to the witness's character for truthfulness. And the fact is because it is a prior felony conviction. It's something the jury should know. If Mr. Rodriguez is going to put his credibility at issue by taking the stand to testify, the jury in fairness should know that he is a convicted felon because that's essentially import, the thrust of Rule 609.[3] That's legitimate impeachment. However, the nature of the felony is not

[3] Idaho Rule of Evidence 609(a) states:

> In General. For the purpose of attacking a witness's character for truthfulness, evidence of the fact that the witness has been convicted of a felony and the nature

> relevant to his credibility. Really it's the nature – the driving under the influence charge would be relevant to propensity, which is an improper method of proving a case, and so that's clearly not something that should be admitted.

(Tr., p.251, L.20 – p.252, L.11.) In short, the district court appears to have determined that the mere fact that Rodriguez was a convicted felon was relevant to his character for truthfulness. However, in State v. Barcella, 135 Idaho 191, 201, 16 P.3d 288, 298 (Ct. App. 2001), the Idaho Court of Appeals explained:

> When asked what character evidence would be offered, counsel said "[t]hat he has been arrested ninety-four times, including forty-two felonies." Thereafter, the court ruled that [the witness] had only two felony convictions within the last ten years, both DUI's, that neither was indicative of lack of credibility, and that neither had probative value.
>
> The district court's ruling was consistent with I.R.E. 609(a), which prohibits the admission of prior convictions that are not relevant to credibility.

In addition to Barcella's clear indication that, under Rule 609(a), felony DUIs are not relevant to credibility, nor probative, the Idaho Supreme Court's statement in State v. Fernandez, 124 Idaho 381, 383, 859 P.2d 1389, 1391 (1993), that "[a]rranging a drug transaction in and of itself is not probative of whether a person is truthful or untruthful[,]" could be applied to Rule 609(a) to preclude the admissibility of such prior.[4] See State v. Franco, 128 Idaho 815, 818, 919 P.2d 344, 347 (Ct. App. 1996) ("Consistent with the Court's statement in *Fernandez*, it appears

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> of the felony must be admitted if elicited from the witness or established by public record, but only if the court determines in a hearing outside the presence of the jury that the fact of the prior conviction or the nature of the prior conviction, or both, are relevant to the witness's character for truthfulness and that the probative value of this evidence outweighs its prejudicial effect to the party offering the witness. If the evidence of the fact of a prior felony conviction, but not the nature of the conviction, is admitted for impeachment of a party to the action or proceeding, the party has the option to present evidence of the nature of the conviction, but evidence of the circumstances of the conviction is not admissible.

[4] The statement in Fernandez was made in relation to I.R.E. 608, not Rule 609(a). See Fernandez, 124 Idaho at 383, 859 P.2d at 1391.

that a trial court should be cautious in considering whether a felony conviction for participating in the delivery of a controlled substance is sufficiently relevant, when exploring its admissibility with respect to an issue of credibility under Rule 609(a).") To the extent a conviction for felony DUI shows "a disregard for the rights of others which might reasonably be expected to express itself in giving false testimony whenever it would be to the advantage of the witness," Rodgers, 119 Idaho at 1072, 812 P.2d at 1233 (quotation marks omitted), the district court did not err.

Even assuming the district court erred in concluding that Rodriguez's 2017 felony conviction (for DUI) was relevant to his truthfulness, such error was, beyond a reasonable doubt, harmless. "Error is not reversible unless it is prejudicial." State v. Stell, 162 Idaho 827, 830, 405 P.3d 612, 615 (Ct. App. 2017). "Harmless error is error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." State v. Garcia, 166 Idaho 661, ___, 462 P.3d 1125, 1138 (2020) (quotation marks omitted). "When the effect of the error is minimal compared to the probative force of the record establishing guilt 'beyond a reasonable doubt' without the error, it can be said that the error did not contribute to the verdict rendered and is therefore harmless." Id.

The district court did not allow the prosecutor to inquire about the nature of the offense, felony DUI, but limited the Rule 609 evidence to the fact that Rodriguez had a prior "felony." Such generic information could not have suggested to the jury that "[h]e did it before, therefore, he's done it again" because the jury was not advised what "it" was. (Tr., p.250, Ls.4-10; see Appellant's brief, p.3.) The effect of the error was minimal "compared to the probative force of the record establishing guilt" beyond a reasonable doubt. Garcia, 166 Idaho at ___, 462 P.3d at 1138.

In sum, Nakita and Anthony watched through their rear-view mirrors as Rodriguez's truck sped dangerously toward the back of their car while they were stopping for a red light during the daytime. Photos of Rodriguez's truck show that the truck's front windshield was clear enough to see if there was more than one person in the truck. (See St. Exs. 5, 6; Def. Ex. B.) The testimony by Nakita and Anthony that they observed only Rodriguez in the red truck, and only Rodriguez get out of the truck, and continued to watch and follow him as he fled the accident scene before sitting at an outdoor table with strangers, is irrefutable evidence that Rodriguez was the driver. Rodriguez's transparently spurious testimony that he would not name the supposed driver, his own roommate, because he (Rodriguez) would "get in trouble, a lot of trouble" (Tr., p.278, Ls.3-14) only verified Nakita and Anthony's testimony further. Last, but not least, Rodriguez's blood alcohol concentration of 0.219 was two-and one-half times over the legal limit of 0.08.

In weighing the probative force of the entire record against the effect of the presumed error of admitting evidence under Rule 609(a), this Court should conclude that, beyond a reasonable doubt, the admission of such testimony did not contribute to Rodriguez's convictions. Garcia, 166 Idaho 661, ___, 462 P.3d at 1138.

CONCLUSION

The state respectfully requests this Court to affirm Rodriguez's judgment of conviction.

DATED this 8th day of March, 2021.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of March, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ John C. McKinney
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JCM/dd