12-12-2017

State v. Salinas Respondent's Brief Dckt. 44627

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44627**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2016-854**
	)	
JUAN SALINAS, JR.,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature of the Case

Juan Salinas, Jr., appeals from the judgment of conviction entered upon the district court's verdict finding him guilty of attempted lewd conduct with a minor under 16 years of age.

Statement of Facts and Course of Proceedings

On December 15, 2015, Ada County Sheriff's Office Detective Robert Fowler of the Internet Crimes Against Children Task Force observed the following ad entitled "Taboo Moms Only" posted on the "Casual Encounters" section of Craigslist (Trial Tr., p.29, L.7 – p.33, L.18; p.36, L.1 – p.37, L.9):

> Hi are there any real taboo moms? With a Minnie me of you.. and into taboo three ways. Let's have some fun. Age not an issue* please send number. So we . can text in private and get the fun going. I'm for real

(Exhibits, p.4[1] (verbatim)).

Detective Fowler was able to determine that the Craigslist post was made on December 14, 2015, from a public library in Caldwell, and that the email address associated with the post belonged to Juan Salinas. (Trial Tr., p.34, L.11 – p.36, L.11.) Detective Fowler would later testify that, in the context of this type of online ad, the term "taboo" refers to incest, and that the term "Minnie me" is often used as a euphemism for children. (Trial Tr., p.37, L.24 – p.39, L.1.) Detective Fowler also testified that the phrase "I'm for real" indicated that Salinas was not looking to engage in fantasy online

[1] Exhibits in the appellate record are contained within the electronic file, "Salinas 44627 ex.pdf." Citations to page numbers of the "Exhibits" refer to the page numbers of this file.

role-playing, but was interested in making real in-person contacts with other individuals. (Trial Tr., p.38, L.21 – p.39, L.6.)

For the next several weeks, Detective Fowler utilized an assumed identity to engage in an online discussion with Salinas. (Trial Tr., p.39, L.14 – p.40, L.7.) In these conversations, Detective Fowler identified himself as a 34-year-old single mother named "Jill" who had a nine-year-old daughter named "Chloe." (Trial Tr., p.39, L.22 – p.40, L.7.) Salinas initiated numerous sexually explicit discussions with Detective Fowler over emails and, later, text messages. (Trial Tr., p.40, L.8 – p.95, L.23; Exhibits, pp.6-18, 486-515.) In these conversations, Salinas graphically, and repeatedly, described specific sexual activities that he wished to engage in with "Chloe," including genital to genital and genital to oral contact. (Id.)

Salinas also inquired as to where "Jill" and "Chloe" lived, suggested that they could get together for coffee and drinks before meeting for sexual activity, and discussed mundane topics when he was not engaging in sexually explicit conversations. (Trial Tr., p.44, L.11 – p.46, L.12; p.49, Ls.1-23.) Detective Fowler later testified that this further indicated that Salinas was not merely interested in online fantasy role-play. (Id.) Salinas also requested that "Jill" send him a photo of herself and of "Chloe." (Trial Tr., p.60, Ls.9-22; Exhibits, pp.7, 11.) Detective Fowler sent Salinas a photo of a female Attorney General investigator, whom he identified as "Jill," but told Salinas that he was not willing to send a photo of "Chloe" until they all could meet each other. (Trial Tr., p.61, L.25 – p.62, L.24; Exhibits, p.13.)

Salinas eventually initiated discussion about meeting "Jill" and "Chloe" in-person at a hotel. (Trial. Tr., p.55, L.23 – p.56, L.5; p.63, L.18 – p.64, L.14.) On January 19,

2016, Salinas asked "Jill" to meet him that day and to bring "Chloe" with her so the three could have a sexual encounter. (Trial Tr., p.94, L.5 – p.96, L.1; p.98, L.25 – p.102, L.4.) Detective Fowler asked Salinas to rent a hotel room, but Salinas replied that he did not have sufficient funds to do so. (Trial Tr., p.96, Ls.7-13.) Detective Fowler then offered to pay for the room and Salinas agreed. (Trial Tr., p.96, L.14 – p.98, L.20.) Detective Fowler rented a room at the Meridian Holiday Inn and told Salinas that he could meet "Jill" and "Chloe" there. (Trial Tr., p.106, L.5 – p.108, L.21.) On January 20, 2016, Salinas drove 20 miles from his Caldwell residence to the Meridian Holiday Inn, where he was arrested upon arrival. (Trial Tr., p.13, L.15 – p.15, L.22; p.20, L.22 – p.23, L.12; Exhibits, p.516.)

Detective Fowler *Mirandized* and interviewed Salinas at the Ada County Sheriff's Office. (Trial Tr., p.110, L.1 – p.111, L.13; State's Exhibit 4.) Salinas initially denied engaging in any sexual discussion about "Chloe," claimed that it was "Jill's" idea to rent the hotel room, and stated that he had only placed the one ad that Detective Fowler responded to, and that "Jill" was the only one to respond to that ad. (State's Exhibit 4, 5:01-5:30; 7:30-7:55; 9:00-10:15; 11:20-11:30; 14:13-14:30; Trial Tr., p.112, Ls.12-23; p.114, L.16 – p.116, L.9.) Eventually, after Detective Fowler began to confront Salinas with evidence from the emails and text messages, Salinas asserted that while he believed that "Jill" was real and that he went to the hotel with the intention of meeting her, he did not believe that "Chloe" was real, and that all sexual discussion regarding her was simply fantasy role-play. (State's Exhibit 4, 24:11-25:10; 29:56-31:21, 33:50-34:24.)

The state charged Salinas with attempted lewd conduct with a minor under 16 years of age, I.C. §§ 18-1508, 18-306. (R., pp.24-25.) Prior to trial, the state filed a

notice of intent to utilize I.R.E. 404(b) evidence that was recovered from Salinas' email account pursuant to a search warrant after his arrest. (R., pp.51-52, 63-70.) Specifically, the state sought to admit: (1) a photo, which Salinas emailed to himself on December 27, 2015, which depicted a nude four-year-old child lying on her back and spreading her legs; (2) Salinas' email exchange, beginning December 26, 2015, with an individual identified as "Lana May," who responded to his Craigslist ad. In this exchange, Salinas engaged in specific and graphic discussions about sexual activity he wished to engage in with "Lana May" and her daughter (see Exhibits, pp.467-474); (3) Salinas' email exchange, beginning December 24, 2015, with an individual identified as "Lisa Lopez," who responded to his Craigslist ad. In this exchange, Salinas also engaged in specific and graphic discussions about sexual activity he wished to engage in with "Lisa Lopez" and her daughters. (see Exhibits, pp.475-485); (4) a separate sexual ad that Salinas placed on Craigslist, and an email exchange between Salinas and an individual who responded to that ad. The responding individual wrote, "Is a bi 15f too young?", to which Salinas replied, "No, Can I see a pic of you :)," to which the individual responded by sending a nude picture of herself to Salinas on December 22, 2015 (R., pp.51-52, 63-70).

Salinas objected to the admission of the proffered I.R.E. 404(b) evidence. (R., pp.57-62.) After a hearing (7/29/16 Tr.), the district court excluded the photograph of the purported 15-year-old that was sent to Salinas (8/15/16 Tr., p.8, L.23 – p.9, L.11).[2] However, the district court ruled that the other I.R.E. 404(b) evidence proffered by the state was admissible to prove Salinas' motive, that the probative value of the evidence

[2] The state presumes that the district court also excluded Salinas' email exchange with the purported 15-year-old individual who sent him the photo, and/or that the state did not seek admission of this email exchange. In any event, the state did not attempt to admit this exchange into evidence during the trial. (See generally Trial Tr.; Exhibits.)

was not substantially outweighed by the danger of unfair prejudice, and that there was sufficient evidence from which a reasonable fact-finder could conclude that the prior acts actually occurred. (8/15/16 Tr., p.6, L.22 – p.15, L.9.)

Salinas waived his right to a jury trial[3] and the case proceeded to a bench trial. (See generally Trial Tr.) Salinas' defense at trial was that the state failed to prove that his email exchanges with "Jill" were anything but fantasy role-play with respect to the sexual discussions about "Chloe," and that the state therefore failed to prove that Salinas attempted to engage in lewd conduct. (Trial Tr., p.234, L.14 – p.252, L.1.) At the conclusion of the trial, the district court entered a guilty verdict. (R., p.87; Trial Tr., p.262, Ls.5-19.) The court then imposed a unified 15-year sentence with four and one-half years fixed. (R., pp.105-108; Trial Tr., p.292, L.4 – p.297, L.22.) Salinas timely appealed. (R., pp.109-111.)

[3] Salinas waived his right to a jury trial before the district court ruled on the I.R.E. 404(b) motion. (See 8/15/16 Tr., p.11, L.17 – p.12, L.6.)

ISSUE

Salinas states the issue on appeal as:

Whether the district court erred by admitting evidence of other acts which was not relevant to a non-propensity purpose.

(Appellant's brief, p.4)

The state rephrases the issue on appeal as:

Has Salinas failed to demonstrate that the district court erred by admitting the challenged evidence?

ARGUMENT

Salinas Failed To Demonstrate That The District Court Erred By Admitting The Challenged Evidence

A. Introduction

Salinas contends that the district court erred by admitting the state's proffered I.R.E. 404(b) evidence. (See generally Appellant's brief.) Specifically, Salinas contends that the district court erred in concluding that the child pornography and sexually explicit email exchanges between Salinas and other individuals who responded to his Craigslist ad were relevant to prove Salinas' motive in attempting the crime of lewd conduct with a minor under 16 years of age. (Id.) A review of the record reveals that the district court correctly concluded that the evidence had some probative value for appropriate I.R.E. 404(b) purposes.

B. Standard Of Review

Whether I.R.E. 404(b) evidence is admissible for a purpose other than propensity is given free review. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009).

C. The District Court Correctly Determined That The Challenged Evidence Was Relevant To Prove Salinas' Motive In Attempting The Crime Of Lewd Conduct

To be admissible, evidence must be relevant. I.R.E. 401, 402. Evidence that tends to prove the existence of a fact of consequence in the case, and has any tendency to make the existence of that fact more probable than it would be without the evidence, is relevant. State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989). "Evidence of other crimes, wrongs, or acts is not admissible to prove a defendant's criminal propensity. However, such evidence may be admissible for a purpose other than

that prohibited by I.R.E. 404(b)." State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2011) (citations omitted). Under I.R.E. 404(b), evidence of other wrongs or acts may be admitted to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. I.R.E. 404(b); State v. Phillips, 123 Idaho 178, 845 P.2d 1211 (1993). In Grist, 147 Idaho at 52, 205 P.3d at 1188, the Idaho Supreme Court clarified that the admission of I.R.E. 404(b) evidence in a child sex abuse case is subject to the same analysis as the admission of such evidence in any other case.

"The rule represents one of inclusion which admits evidence of other crimes or acts relevant to an issue in the trial, except where it tends to prove *only* criminal disposition." State v. Russo, 157 Idaho 299, 308, 336 P.3d 232, 241 (2014) (quoting United States v. Brown, 562 F.2d 1144, 1147 (9th Cir. 1977) (emphasis added in Russo)).

"Motive is generally defined as that which leads or tempts the mind to indulge in a particular act. It is distinguishable from intent, which is the purpose to use a particular means to effect a certain result." State v. Stevens, 93 Idaho 48, 53, 454 P.2d 945, 950 (1969) (citations omitted). There is no requirement that evidence must show that the motive for committing the crime was personal to the victim. State v. Almaraz, 154 Idaho 584, 591–592, 301 P.3d 242, 249–250 (2013). "Evidence of motive is relevant when the existence of a motive is a circumstance tending to make it more probable that the person in question did the act." Russo, 157 Idaho at 308, 336 P.3d at 241 (internal quotation marks omitted). Evidence of motive, however, is still limited by the fact that I.R.E. 404(b) prohibits the introduction of evidence of acts other than the crime for which a defendant is charged if its probative value is entirely dependent upon its tendency to demonstrate the defendant's propensity to engage in such behavior. Grist, 147 Idaho at

54, 205 P.3d at 1190; State v. Pokorney, 149 Idaho 459, 463, 235 P.3d 409, 413 (Ct. App. 2010).

Before purported I.R.E. 404(b) evidence may be admitted, a court also must determine whether there is sufficient evidence to establish the prior acts as fact, and whether the evidence, even if relevant for an appropriate Rule 404(b) purpose, should be excluded because the danger of unfair prejudice substantially outweighs its probative value. Grist, 147 Idaho at 52, 205 P.3d at 1188; State v. Shahan, 139 Idaho 267, 275-276, 77 P.3d 956, 964-965 (2003). In this case, Salinas has not challenged the district court's conclusions that there was sufficient evidence to establish the proffered I.R.E. 404(b) evidence as fact, or that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.[4] (See Appellant's brief, pp.5-11.) Therefore, this Court need only determine whether the district court erred in determining that the evidence had any relevance for a purpose other than demonstrating criminal propensity. Salinas has failed to make such a showing.

The district court applied the proper standards and correctly concluded that the proffered evidence (aside from the photograph sent by the purported 15-year-old to

[4] As the fact-finder in the bench trial, the district court noted that it was in a much better position than a jury would be to correctly utilize the admitted I.R.E. 404(b) evidence only for the purpose for which it was admitted, and not for some improper purpose, such as to demonstrate criminal propensity. (8/15/16 Tr., p.11, L.17 – p.12, L.17); see also State v. Burrell, 772 N.W.2d 459, 467 (Minn. 2009) (noting that it would be "in a sense ridiculous" to exclude relevant evidence at a bench trial on the ground of unfair prejudice since it is, after all, the district court judge who is called upon in the first instance to rule upon the admissibility of the evidence).

Salinas in response to a different Craigslist ad), was admissible for the purpose of proving Salinas' motive.[5]

The similarities in timeframe and content between the admitted I.R.E. 404(b) evidence and Salinas' charged conduct rendered the evidence admissible. Salinas' act of emailing the nude photo of the child to himself, and his sexually-explicit email exchanges with two other individuals who responded to his Craigslist ad, all occurred in the same mid-December 2015 – mid-January 2016 timeframe, during which Salinas was also engaged in the online conversation with "Jill" which ultimately led to Salinas' arrest at the Meridian Holiday Inn. The email conversations with "Lisa Lopez" and "Lana May," like the email conversations with "Jill," all consisted of Salinas' sexually-explicit attempts to cultivate relationships and arrange meetings with mothers and their daughters in order to engage in sexual activity. (See Exhibits, pp.467-485.) This evidence tended to demonstrate Salinas' intent and motive with respect to "Jill" and "Chloe," and also established Salinas' plan to utilize Craigslist to gain sexual access to children through their mothers.

Additionally, Salinas, in his statements made to Detective Fowler during the interview at the Ada County Sheriff's Department (which was admitted into evidence at

[5] Prior to trial, in addition to motive, the state also argued that the proffered evidence was relevant to prove intent. (R., p.63; 7/29/16 Tr., p.8, Ls.6-19; p.10, L.5 – p.11, L.4; p.13, L.19 – p.14, L.3.) While the district court admitted the evidence on the ground that it was relevant to prove motive, it also noted that the evidence "may become relevant for other purposes" depending on how the evidence at trial developed. (8/15/16 Tr., p.14, L.23 – p.15, L.2.) Because the evidence was admitted at trial, there was no occasion for the court to evaluate whether it was also relevant for some other appropriate I.R.E. 404(b) purpose besides motive. For many of the same reasons as discussed in this brief, the state asserts that the evidence was also relevant to prove intent and a common scheme or plan. This Court may affirm the judgment of conviction and the district court's admission of the challenged evidence on any correct legal theory. See, e.g., State v. Avelar, 129 Idaho 700, 704, 931 P.2d 1218, 1222 (1997).

trial), and in the context of his defense at trial, asserted that he traveled to the Meridian Holiday Inn only to have contact with "Jill," that he had no intention of engaging in sexual activity with "Chloe," and that nobody else besides "Jill" responded to his Craigslist ad. (See generally State's Exhibit 4.) The admitted I.R.E. 404(b) evidence that Salinas was, in the same timeframe that he was communicating with "Jill," engaged in similar conversations with two other individuals, and also emailed a sexually explicit photo of a child to himself, refuted Salinas' statements to Detective Fowler and his defense theory. The state was therefore permitted to utilize this evidence. See State v. Davis, 916 A.2d 493, 502-503 (N.J. App. 2007) (by arguing that his sexually explicit online conversations with a minor were "mere fantasizing with another person he believed to be an adult," defendant "placed in issue his motive and intent in conversing with [the victim] and possessing the pornographic images." This allowed certain evidence of other acts to be admitted as "probative of whether defendant intended to engage in sexual acts with [victim], and whether [Davis] knowingly possessed the pornographic images.").

In reaching its conclusion in this case, the district court analyzed and relied, in part, upon Russo, supra, and State v. Rossignol, 147 Idaho 818, 215 P.3d 538 (Ct. App. 2009). (8/15/16 Tr., p.9, L.21 – p.11, L.16.) Rossignol was charged with lewd conduct for having sexual contact with his daughter. Rossignol, 147 Idaho at 820-821, 215 P.3d at 540-541. The district court admitted I.R.E. 404(b) evidence that Rossignol possessed child pornography and incest stories on the ground that this evidence was relevant to prove intent, motive, and plan. Id. at 823, 215 P.3d at 543. The Idaho Supreme Court affirmed. Id. at 823-825, 215 P.3d at 543-546. Although evidence of the pornography

was admitted primarily to corroborate the victim's claim that Rossignol showed her pornography, the "incest stories were relevant to the intent element of the crimes Rossignol was charged with and to show Rossignol's motive and plan to engage in sexual acts with his daughter," even though there was no evidence that the victim knew about the stories. Id. at 823-825, 215 P.3d at 543-546. Salinas' email exchanges with the two other individuals who responded to the same Craigslist ad that "Jill" did, and Salinas' descriptions of the types of sexual activity he sought to engage in with the daughters of those individuals, was even more probative of his intent, motive, and plan to engage in similar acts with "Chloe" than the mere "stories" were in Rossignol with respect to the charged crimes in that case.

In Russo, the defendant was charged with committing a rape at knifepoint. Russo, 157 Idaho at 302-304, 336 P.3d at 235-237. The district court admitted I.R.E. 404(b) evidence that Russo told a detective that he fantasized about raping women, and possessed pornographic images depicting rapes. Id. at 307-308, 336 P.3d at 240-241. The court concluded that the evidence was relevant to show motive, preparation, and plan. Id. In affirming the district court, the Idaho Supreme Court rejected Russo's argument that, because the evidence was not specifically related to the victim in the case and instead demonstrated Russo's attitudes about rape in a general sense, the evidence was not relevant for any permissible purpose. Id. The Court held that the district court did not err in concluding that the evidence of Russo's rape fantasies and his possession of pornography that was consistent with those fantasies was relevant to his motive in raping the victim in that case. Id. at 308, 336 P.3d at 241. Again, Salinas' email exchanges with the two other individuals who responded to the same Craigslist ad that "Jill" did, and

Salinas' descriptions of the types of sexual activity he sought to engage in with the daughters of those individuals, was even more probative of his intent, motive, and plan to engage in similar acts with "Chloe" than the mere "stories" were in Russo with respect to the charged crime in that case.

State v. Folk, 157 Idaho 869, 341 P.3d 586 (Ct. App. 2014), a case relied upon by Salinas on appeal (Appellant's brief, pp.6-7, 10), is distinguishable. Folk was charged with lewd conduct of a minor under 16. Id. at 872, 341 P.3d at 589. The Idaho Court of Appeals held that the district court erred by admitting, pursuant to I.R.E. 404(b), evidence associated with Folk's two prior convictions for sexual misconduct involving children. Id. at 873, 876-879, 341 P.3d at 590, 593-596. The charged conduct associated with the prior convictions occurred in 1992 and 1999, respectively, while the charged conduct associated with the new crime occurred in 2007. Id. at 872-873, 341 P.3d at 589-590. The Court of Appeals distinguished Russo and concluded that, while evidence of Russo's rape fantasies and his possession of pornography that was consistent with those fantasies was relevant to Russo's motive to indulge in the particular act of rape, the prior convictions offered in Folk were "merely propensity evidence." Id. at 876-879, 341 P.3d at 593-596. The proffered evidence in the present case is also distinguishable from the evidence deemed inadmissible in Folk. Salinas' contemporaneous and sexually-explicit email conversations about the children of the two other women who responded to his ad, and the child pornography he emailed to himself in the same timeframe, plainly provided evidence of Salinas' motive, intent, and plan with respect to his similar pursuit (and ultimately his attempted lewd conduct) of "Chloe," in a manner in which the years-old convictions in Folk could not.

On appeal, Salinas also contends that permitting the state to present I.R.E. 404(b) evidence of the nature presented in this case "would authorize essentially any evidence of the defendant's sexual proclivities to be admissible, thereby effectively reviving the distinction between admission of evidence in sexual assault cases and all other types of cases despite the Idaho Supreme Court decision that such a distinction is improper." (Appellant's brief, p.1.) However, the state asserts, to the contrary, that the I.R.E. 404(b) evidence in this case did not simply demonstrate Salinas' "sexual proclivities," but that these acts committed in the same timeframe as the underlying charged conduct also tended to prove Salinas' motive for taking a substantial step towards committing the crime of lewd conduct, Salinas' criminal intent in engaging in the conversations with "Jill" and in driving to the Meridian hotel, and Salinas' common scheme or plan to utilize a Craigslist ad to solicit mothers willing to make their children available for sex.

The district court properly concluded that the proffered I.R.E. 404(b) evidence was relevant to prove Salinas' motive. The evidence was also relevant to prove Salinas' criminal intent and common scheme or plan. Salinas has failed to show that the district court erred in admitting this evidence. This Court should therefore affirm Salinas' judgment of conviction.

D. Even If The District Court Erred In Admitting The Challenged Evidence, Any Such Error Was Harmless

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected …." I.R.E. 103(a). See also I.C.R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). "The inquiry is whether, beyond a reasonable doubt, a rational jury

would have convicted [the defendant] even without the admission of the challenged evidence." State v. Johnson, 148 Idaho 664, 669, 227 P.3d 918, 923 (2010) (citing Chapman v. California, 386 U.S. 18, 24 (1967); Neder v. United States, 527 U.S. 1, 18 (1999)).

Even if the district court erred in admitting some or all of the challenged evidence, any such error was harmless in the circumstances of this case. As set forth in the Statement of Facts and Course of Proceedings section of this brief, Salinas' arrest upon his arrival at the Meridian Holiday Inn was the culmination of a month-long investigation and undercover operation in which Salinas' own words, as set forth in dozens of emails and text messages presented at trial, made clear his intent to pursue sexual activity with "Chloe" through these conversations with "Jill." (See Exhibits.) At no point in these dozens of text and email messages, or in the ad itself, did Salinas indicate that he was only role-playing. (Trial Tr., p.113, L.16 – p.114, L.10.) Even without the evidence that Salinas was simultaneously utilizing similar tactics to sexually pursue other children, and that he emailed himself child pornography in this same timeframe, a rational fact-finder would have still found, beyond a reasonable doubt, that Salinas attempted to engage in lewd conduct with "Chloe."

The harmlessness of the evidence is particularly apparent in this case, where the district court, serving as the fact-finder in the bench trial, was required to rule on, and was thus necessarily aware of, the nature of the challenged evidence, regardless of whether it was ultimately admitted at trial. Just as this Court would not presume that the district court's mere knowledge of the evidence rendered the evidence harmful to Salinas had it not been admitted, it should not presume that the district court was swayed by any

unfair prejudice resulting from the evidence, simply because the evidence *was* admitted at trial.

Therefore, even if the district court erred in concluding that the I.R.E. 404(b) evidence was relevant for appropriate purposes, this Court should still affirm the judgment of conviction because any such error was harmless beyond a reasonable doubt.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction entered upon the district court's verdict finding Salinas guilty of attempted lewd conduct with a minor under 16 years of age.

DATED this 12th day of December, 2017.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of December, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd