

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41613

STATE OF IDAHO, ) 2015 Unpublished Opinion No. 396  
 )  
Plaintiff-Respondent, ) Filed: March 6, 2015  
 )  
v. ) Stephen W. Kenyon, Clerk  
 )  
JEFFREY DANIEL CASAD, ) THIS IS AN UNPUBLISHED  
 ) OPINION AND SHALL NOT  
Defendant-Appellant. ) BE CITED AS AUTHORITY  
 )

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Melissa Moody, District Judge.

Judgment of conviction for two counts of felony injury to a child, affirmed.

Sara B. Thomas, State Appellate Public Defender; Spencer J. Hahn, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Nicole L. Schafer, Deputy Attorney General, Boise, for respondent.

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GUTIERREZ, Judge

Jeffrey Daniel Casad appeals from his judgment of conviction for two counts of felony injury to a child. Specifically, he contends the district court erred by admitting evidence of Casad's statements and conduct indicating his disinterest in having his children returned to his custody because it constituted irrelevant, impermissible propensity evidence. For the reasons set forth below, we affirm.

**I.**

**FACTS AND PROCEDURE**

After receiving an anonymous referral regarding the welfare of Casad's two infant children, a social worker with the Idaho Department of Health and Welfare (the Department), Chris Miller, and Detective Sean Stace visited Casad's home to investigate. Upon observing the

condition of the children and the home, and speaking with Casad and the children's mother, Krystal Leggens, the children were declared in imminent danger and removed from the home.

Casad and Leggens were each indicted by a grand jury on two counts of felony injury to a child, Idaho Code § 18-1501(1), for placing the children in a position where they failed to thrive. The matter initially proceeded to a joint trial, but after a mistrial was declared, Leggens pled guilty.

Prior to Casad's retrial, the State filed a notice of intent to use evidence governed by Idaho Rule of Evidence 404(b). Among other things, the State sought to introduce Casad's statements to an officer while his children were being taken into custody that he did not intend to cooperate with the Department to reunite with his children<sup>1</sup> and testimony regarding Casad's failure to inquire as to the children's condition or to visit them.<sup>2</sup> Over Casad's objection that the evidence was not relevant for a permissible purpose and unfairly prejudicial, the district court initially determined the evidence was admissible as *res gestae*. Upon reconsideration, the district court determined the evidence was admissible as "relevant to the act or the failing to act portion of the State's burden of proof" in that "a fact finder could find that it is more likely that someone who has no interest in their children is more likely to act or failed to act where a reasonable person would otherwise act."

The case proceeded to trial, where a jury found Casad guilty as charged. Casad now appeals.

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<sup>1</sup> Casad's statements to this effect including telling an officer, "I don't want my kids back," and asserting that he would not "do anything [the Department] ask[s] me to do, and they can have them if they want them." The officer testified as to these statements and they were also captured by an audio recording of the encounter which was admitted as evidence and played for the jury.

<sup>2</sup> A social worker with the Department testified that Casad had declined visitation with the children, saying "he was too busy." The social worker also testified that Casad never asked her about the children or their condition.

## II. ANALYSIS

Casad contends the district court's admission of the disputed evidence was erroneous because it constituted propensity evidence prohibited by Rule 404(b).<sup>3</sup> Specifically, he argues that the district court's ruling that "subsequent acts demonstrating disinterest in his children were admissible because they could cause a jury to believe that Mr. Casad had acted similarly at the time of the offense for which he was charged" constitutes improper propensity evidence prohibited by Rule 404(b).

A trial court has broad discretion in determining whether to admit or exclude evidence, and its judgment in the fact finding role will only be disturbed on appeal when there has been a clear abuse of discretion. *State v. Joy*, 155 Idaho 1, 6, 304 P.3d 276, 281 (2013); *State v. Watkins*, 148 Idaho 418, 421, 224 P.3d 485, 488 (2009). However, whether evidence is relevant is a question of law this Court reviews de novo. *Joy*, 155 Idaho at 6, 304 P.3d at 281; *State v. Shackelford*, 150 Idaho 355, 363, 247 P.3d 582, 590 (2010).

Rule 404(b) prohibits 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. *State v. Grist*, 147 Idaho 49, 54, 205 P.3d 1185, 1190 (2009); *State v. Whitaker*, 152 Idaho 945, 948, 277 P.3d 392, 395 (Ct. App. 2012). We exercise free review of the trial court's relevancy determination in this regard. *State v. Sheldon*, 145 Idaho 225, 229, 178 P.3d 28, 32 (2008); *Whitaker*, 152 Idaho at 948, 277 P.3d at 395; *State v. Scovell*, 136 Idaho 587, 590, 38 P.3d 625, 628 (Ct. App. 2001).

We need not determine whether this evidence was properly admitted pursuant to Rule 404(b), however, because even assuming it was error to admit the evidence, such error was harmless given the overwhelming amount of other evidence presented at trial regarding Casad's guilt. The Idaho Criminal Rules provide that any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. I.C.R. 52. The inquiry is whether, beyond a reasonable doubt, a rational jury would have convicted the defendant even without the admission of the challenged evidence. *Chapman v. California*, 386 U.S. 18, 24 (1967); *State v. Johnson*, 148 Idaho 664, 669, 227 P.3d 918, 923 (2010). To show an error is harmless, the State

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<sup>3</sup> He also argues the evidence was not properly admitted as *res gestate*, however, given our resolution of the case we need not reach that issue.

must prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *State v. Perry*, 150 Idaho 209, 221, 245 P.3d 961, 973 (2010). Interpreting *Chapman*, the Supreme Court of the United States has explained that:

To say that an error did not “contribute” to the ensuing verdict is not, of course, to say that the jury was totally unaware of that feature of the trial later held to have been erroneous.

To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.

*Yates v. Evatt*, 500 U.S. 391, 403 (1991), *overruled in part on other grounds by Estelle v. McGuire*, 502 U.S. 62, 72 n.4 (1991). Thus, an appellate court’s inquiry is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error. *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993); *Joy*, 155 Idaho at 11, 304 P.3d at 286.

Casad was indicted under section 18-1501(1), which, in relevant part, provides:

Any person who, under circumstances or conditions likely to produce great bodily harm or death . . . willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

Section 18-1501(5) sets forth a specific definition of “willfully” applicable to the crime:

As used in this section, “willfully” means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.

The evidence presented at trial indicated that when Miller and Detective Stace arrived at Casad’s home on a morning in February 2013, Casad answered the door. Detective Stace could see Leggens lying on the bed, but she did not respond or move from the bedroom upon their entry into the house. Casad led them to the children who were in their basement bedroom. Miller and Detective Stace were struck by the extreme odor of urine and feces coming from the children’s bedroom and found L.C., who was eighteen months old, in a playpen with no blanket and a blank stare on her face and D.C., seven months old, in a filthy, urine-stained crib with a blank stare on his face. L.C. was wearing pajamas with no feet and D.C. was wearing only a light cotton t-shirt and a very soaked and foul-smelling diaper. Both children’s hands and feet

were purple and both children felt cold. Miller testified that initially he was unsure if D.C. was alive because he was not moving. Both Miller and Detective Stace testified the children struck them as very small for their ages. When Miller and Detective Stace asked Casad about the children's conditions, Casad grabbed D.C. by the arm, "aggressively" jerked him up off the bed, drug him to the middle of the mattress and dropped him there, telling Miller and Detective Stace that D.C. was "fine." When Miller picked D.C. up, D.C. was limp with very little muscle strength in his limbs or neck. Both children exhibited a "flat affect" but flinched and reacted in a startled manner when Casad came near them. Neither Leggens nor Casad could recall when the children last ate.

The children were taken to the Children at Risk Evaluation Services (CARES) facility where medical staff examined them. It was determined that D.C. needed to be hospitalized immediately, where he spent a week being treated. Both children smelled extremely bad, were undersized and malnourished, and exhibited significant developmental delays. L.C. exhibited deficiencies in her language, social, and motor skills; was weak and could barely take any steps; demonstrated very few hunger cues; and exhibited little eye contact. D.C.'s development was at the level of a one or two-month-old child. He had difficulty with the "suck and swallow" reflexes necessary for eating and exhibited symptoms of "refeeding syndrome" in which a person who has been deprived of food for a long period has significant problems when resuming eating. A doctor who examined D.C. at CARES and in the hospital testified that D.C.'s muscles were very weak, that he felt like a rag doll when held, and that his head "lagged" in a manner usually only seen in newborns. The doctor further testified that D.C. exhibited a "frozen stare" with very little eye contact and lacked verbal cues as well as hunger cues to signal when he was hungry. The children were diagnosed with failure to thrive. Because doctors were not able to identify any underlying medical conditions, their conditions were attributed to insufficient nutrition.

Once the children were in the custody of the State and being fed and cared for properly, they both showed significant improvement in weight, overall health, and in meeting developmental milestones, although the treating doctor testified that it was unknown whether both would fully recover. Approximately one month after being taken into custody, both L.C. and D.C. had gained approximately four pounds each, with L.C. weighing approximately twenty pounds and D.C. weighing approximately fourteen pounds.

The jury was shown pictures of the conditions the children were found in, pictures of the children on the day they were removed from the home, and pictures taken of the children approximately a month later when they had gained significant weight and begun to exhibit more normal behavior. Additionally, Francine Frank, a social worker assigned to the case, testified to her interactions with Casad in the days after the children were taken into Department custody where he admitted, among other things, that he knew the children were underweight, that it was his fault that the children were in this condition and that he should have done something earlier, that he did not believe the home was a safe environment for children, and that he did not believe Leggens was mentally competent to properly care for the children.

At trial, Casad did not dispute the children's serious conditions at the time they were taken into the State's custody; rather, Casad's defense was largely that according to the couple's division of labor, Krystal was in charge of the children and, thus Casad was not aware of their condition. As Krystal became more depressed, he argued, she neglected the children but continued to tell Casad, who worked nights five days a week, that she was feeding them and caring for them properly. He argued that his statements to Frank that, in hindsight, he should have intervened, did not prove that prior to the children's removal he knew the children were in a situation that was likely to result in their injury or harm.

Given the overwhelming evidence presented at trial, including undisputed evidence of the children's physical conditions and living conditions when they were taken into custody (reiterated by the pictures shown to the jury); undisputed evidence that Casad lived with the children and saw them regularly and was, in fact, in the home when Miller and Detective Stace found the children in the conditions they were discovered; and evidence that Casad was well aware of Leggens' limitations and admitted to Frank that Casad knew the environment in which the children had been living was detrimental to their health, we conclude beyond a reasonable doubt that even if the disputed evidence was erroneously admitted, it did not contribute to the verdict obtained. Additionally, we note that pursuant to the statute defining the crime, the State was not required to prove that Casad definitively knew that the children were in a situation endangering their health, but that a *reasonable* person would have known that failing to act would likely subject the children to harm. Casad's statements and actions after the children were taken into custody indicating his disinterest in reuniting with the children has very little relevance to this determination, which, in addition to cutting against its admissibility, also

significantly diminishes the chance that the jury relied on this evidence in reaching a verdict. *Accord Yates*, 500 U.S. at 403 (“To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.”). Rather, the jury was presented with extensive, undisputed evidence of the serious physical conditions of the children that were not attributable to any underlying medical condition, the unsanitary living conditions in which they were found, and evidence of Casad’s proximity to the children on which to base its determination that a reasonable person in Casad’s position would have known that the children were likely to suffer serious harm from the situation. On this basis, we are convinced, beyond a reasonable doubt, that a rational jury would have convicted Casad even without the admission of the challenged evidence. *See Chapman*, 386 U.S. at 24. Casad’s judgment of conviction for two counts of felony injury to a child is affirmed.

Chief Judge MELANSON and Judge GRATTON **CONCUR**.