

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36826

STATE OF IDAHO,)	2011 Unpublished Opinion No. 576
)	
Plaintiff-Respondent,)	Filed: August 8, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
DONALD J. HALL,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge.

Order denying motion for mistrial, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Donald J. Hall was found guilty by a jury of trafficking in methamphetamine by manufacturing, possession of a controlled substance, and possession of drug paraphernalia. On appeal, he contends that the trial court erred in denying his motion for mistrial which was predicated upon a witness’s mention that Hall used drugs the day before the charged offenses.

I.

BACKGROUND

Hall was charged with multiple drug offenses after being found by police in a motel room containing drugs, drug paraphernalia, and indicia of drug manufacturing. The woman Hall was with, Ms. Nelson, had checked into the motel for a single night. The motel clerk called police after watching Hall and Nelson make multiple trips from their vehicle to the room, which the clerk found suspicious.

After the police found that there was a warrant out for Nelson's arrest, they went to the motel to arrest her. Inside the room, the police found Nelson, Hall, equipment and ingredients used to make methamphetamine, and a white powder that was suspected of being methamphetamine. Hall was charged with trafficking in methamphetamine by manufacturing, I.C. § 37-2732B(a)(3); possession of methamphetamine, I.C. § 37-2732(c); possession of marijuana, I.C. § 37-2732(c); possession of a controlled substance by an inmate, I.C. § 18-2511; possession of drug paraphernalia, I.C. § 37-2734A(1); and frequenting a place where controlled substances are known to be located, I.C. § 37-2732(d).

Hall ultimately went to jury trial on, and was found guilty of, trafficking in methamphetamine by manufacturing, possession of methamphetamine, and possession of drug paraphernalia. During the trial, Hall moved for a mistrial after the following exchange took place during the prosecutor's direct examination of Nelson regarding cotton balls that were found in the motel room:

Q. And were you aware of whether or not there was any methamphetamine on those cotton balls?

A. Yes.

Q. Okay. And how are you aware that there was methamphetamine on those cotton balls?

A. Because we used it.

Q. When you talk about using it, did you use them on the 24th?

A. Yes. And we could have been the day before as well.

Hall objected and made a motion for a mistrial, arguing that Nelson's response introduced improper character evidence after the court had issued a pretrial order that Nelson was not to testify to any prior misconduct of Hall. The court denied Hall's motion stating, "I don't think right now that it is so prejudicial to a fair trial as to declare a mistrial." Hall thereafter declined the court's offer to give the jury a limiting jury instruction with regard to the testimony.

Hall now appeals from his judgment of conviction, arguing that the court erred in denying his motion for a mistrial based on Nelson's testimony that Hall and Nelson may have used the methamphetamine in the cotton balls the day before the police discovered the items in the motel room. Hall argues the testimony was improper character evidence, in violation of Idaho Rule of Evidence 404(b), and was so prejudicial so as to deprive him of a fair trial.

II. ANALYSIS

In criminal cases, motions for mistrial are governed by Idaho Criminal Rule 29.1(a), which provides, “A mistrial may be declared upon motion of the defendant, when there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, which is prejudicial to the defendant and deprives the defendant of a fair trial.” Our standard for reviewing a district court’s denial of a motion for mistrial is well established:

[T]he question on appeal is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the “abuse of discretion” standard is a misnomer. The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge’s refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

State v. Urquhart, 105 Idaho 92, 95, 665 P.3d 1102, 1105 (Ct. App. 1983). *See also State v. Keyes*, 150 Idaho 543, 544, 248 P.3d 1278, 1279 (Ct. App. 2011); *State v. Gutierrez*, 143 Idaho 289, 294, 141 P.3d 1158, 1163 (Ct. App. 2006). Error is harmless and not reversible if the reviewing court is convinced “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) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)); *Keyes*, 150 Idaho at 544, 248 P.3d at 1279.

Hall argues that the prejudice he suffered from Hall’s testimony was that the jury heard evidence that Hall had used methamphetamine on a prior occasion, thereby informing the jury that he “had a history of using methamphetamine,” making him appear to be a person of criminal character with a propensity to commit the charged acts. Therefore, Hall asserts, the district court committed reversible error by denying the motion for a mistrial.

Idaho Rule of Evidence 404(b) prevents character evidence of other crimes or wrongs from being introduced at trial for the purpose of showing that the defendant acted in conformity therewith. *State v. Grist*, 147 Idaho 49, 52, 205 P.3d 1185, 1188 (2009); *State v. Wood*, 126 Idaho 241, 244, 880 P.2d 771, 774 (Ct. App. 1994). This evidence rule reflects the principle that a defendant must be convicted based only upon proof that he committed the crime with which he

is charged, not based upon poor character or uncharged wrongs of the past. *Wood*, 126 Idaho at 244, 880 P.2d at 774. *See also Grist*, 147 Idaho at 52, 205 P.3d at 1188. Character evidence therefore is properly excluded by I.R.E. 404(b) because it may have a strong influence on the jury, leading them to determine guilt on the assumption that because the defendant “did it before, he must have done it this time” or to determine guilt on the belief that whether or not the defendant committed the charged crime he deserves to be punished anyway for the other wrongs. *Wood*, 126 Idaho at 244-45, 880 P.2d at 774-75.

The trial court’s refusal to grant a mistrial did not constitute reversible error because Nelson’s passing reference to one occasion of drug use the day before the charged crimes was harmless and did not deprive Hall of a fair trial. Nelson’s brief reference to the possibility that she and Hall may have used methamphetamine on the day prior to the charged incidents was not so prejudicial so as to overwhelm all the admissible evidence that he was guilty of trafficking, possession of drugs, and possession of paraphernalia such that Nelson’s comment can be said to have contributed to the verdict in any meaningful way. Hall was found by police in the motel room with drugs, indicia of drug manufacturing, and drug paraphernalia. Nelson testified that the illicit items found in the room were Hall’s and that he was the one manufacturing methamphetamine; Nelson’s only job was to clean up the “dishes” from the process. Additionally, Nelson permissibly testified that she and Hall used methamphetamine the day of the charged offenses. Any unfair prejudice from the jury being aware that Hall used methamphetamine the day before as well is *de minimis*. Hall does not even attempt to argue that the verdict would have been different absent Nelson’s passing reference.

Therefore, because we agree with the district court that the objected-to comment did not deprive Hall of a fair trial, the denial of Hall’s motion for a mistrial is affirmed.

Chief Judge GRATTON and Judge MELANSON CONCUR.