IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36843

STATE OF IDAHO,	)	**2011 Unpublished Opinion No. 559**
	)	
Plaintiff-Respondent,	)	**Filed: July 22, 2011**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
DARYL L. REID, JR.,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bear Lake County. Hon. Mitchell W. Brown, District Judge.

Judgments of conviction and sentences for twenty-five counts of lewd conduct with a minor under sixteen, twenty-one counts of sexual battery of a minor child under sixteen or seventeen years of age, one count of forcible rape, and one count of misdemeanor battery, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant. Elizabeth A. Allred argued.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent. Kenneth K. Jorgensen argued.

PERRY, Judge Pro Tem

Daryl L. Reid, Jr. was found guilty by a jury of twenty-five counts of lewd conduct with a minor under sixteen, I.C. § 18-1508; twenty-one counts of sexual battery of a minor child sixteen or seventeen years of age, I.C. § 18-1508A(1)(a); one count of forcible rape, I.C. § 18-6101(3), (4); and one count of misdemeanor battery, I.C. § 18-903, for offenses committed against his stepdaughter, M.T., and his biological daughter, V.R. Reid contends that the district court erred by admitting I.R.E. 404(b) evidence of sexual conduct allegedly committed with his two other stepdaughters, T.V. and A.T., and by excluding certain defense evidence as inadmissible hearsay. Reid also contends that the prosecutor committed misconduct by violating a court order limiting the presentation of evidence and asserts a number of additional claims of prosecutorial misconduct based upon the prosecutor's voir dire questions to the jury and his opening and closing statements. Finally, Reid contends that his aggregate sentence of life imprisonment with

thirty-three years fixed is excessive and that his fines of $1,500 for each felony conviction are excessive.

I.

ANALYSIS

A. Idaho Rule of Evidence 803(3) Hearsay Exception

Reid contends that the district court erred by precluding the presentation of certain defense evidence as inadmissible hearsay not subject to the I.R.E. 803(3) exception of a declarant's "then existing state of mind, emotion, sensation, or physical condition." In the defense case, Reid called Charlotte Marx to the stand. Marx testified that she was an acquaintance of the defendant's family and a sometimes confidant of victim M.T. Defense counsel asked Marx whether "[a]t some point did [M.T.] disclose to you that she was being compelled to make accusations against [the defendant] by her mother?" The State objected on hearsay grounds and the jury was excused for resolution of the objection.

During the ensuing argument, defense counsel asserted that the evidence was admissible on a number of grounds, one of which was the I.R.E. 803(3) hearsay exception. The rule states:

> (3) *Then Existing Mental*, *Emotional*, *or Physical Condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

Following argument, the district court held that the exception did not apply. Reid posits error in this ruling on appeal. The commonly referred to "state of mind" hearsay exception, along with Rule 803(1) present sense impression and Rule 803(2) excited utterance, is a modern codification of one of the three common law "spontaneous statement" hearsay exceptions. Although the rule does not expressly state, factors of trustworthiness and necessity play a large role in a trial court's decision whether to admit a declarant's expression of his state of mind or whether to exclude it under I.R.E. 403, as well as in the decision whether to admit or exclude the content of additional statements accompanying that expression. *See* 2 MCCORMICK ON EVIDENCE § 267-270, 273 (Kenneth S. Broun ed.) (6th ed. 2006). Because statements that do not describe a then-existing mental, emotional or physical condition are not admissible under the rule, *State v. Gray*, 129 Idaho 784, 795, 932 P.2d 907, 918 (Ct. App. 1997), any statements by a

declarant not accompanying a statement including the declarant's state of mind are not admissible under the exception. Also, if a statement of a victim's "fear" of an individual is relevant to an important issue in a case and is admitted along with the reasons for that fear, it is error not to give a limiting instruction telling the jury that the statement may not be used to prove the underlying facts upon which the fear is based. *State v. Rosencrantz*, 110 Idaho 124, 127-28, 714 P.2d 93, 96-97 (Ct. App. 1986).

Here, Reid failed to establish that any of M.T.'s statements were spontaneous ones, as opposed to statements made in response to questioning or upon reflective thought. Reid also failed to establish an applicable hearsay exception as to M.T.'s mother's statements which accompanied M.T.'s statement that she was scared. We conclude Reid has failed to show error in the district court's ruling that M.T.'s various statements were not admissible under I.R.E. 803(3).

B. The Admissibility of I.R.E. 404(b) Evidence

Reid next contends that the district court erred by admitting evidence of uncharged sexual conduct committed with two other of his stepdaughters, T.V. and A.T. At trial, the district court limited the application of this evidence to the charged crimes in this case involving M.T. as a victim. Reid contends that the evidence should have been excluded by I.R.E. 404(b) because the similarities between his conduct with T.V. and A.T. and the charged conduct against M.T. were too general in nature to support admissibility of the evidence as part of a common scheme or plan. Reid also contends that the district court should have excluded the evidence under I.R.E. 403, because its probative value was substantially outweighed by the danger of unfair prejudice. Reid has failed to demonstrate trial court error.

Evidence of other crimes, wrongs, or acts is not admissible to prove a defendant's criminal propensity. I.R.E. 404(b); *State v. Needs*, 99 Idaho 883, 892, 591 P.2d 130, 139 (1979); *State v. Winkler*, 112 Idaho 917, 919, 736 P.2d 1371, 1373 (Ct. App. 1987). However, such evidence may be admissible for a purpose other than that prohibited by I.R.E. 404(b). *State v. Avila*, 137 Idaho 410, 412, 49 P.3d 1260, 1262 (Ct. App. 2002). In determining the admissibility of evidence of prior bad acts, the Idaho Supreme Court has utilized a two-tiered analysis. The first tier involves a two-part inquiry: (1) whether there is sufficient evidence to establish the prior bad acts as fact; and (2) whether the prior bad acts are relevant to a material disputed issue concerning the crime charged, other than propensity. *State v. Grist*, 147 Idaho 49, 52, 205 P.3d

1185, 1188 (2009). We will treat the trial court's factual determination that a prior bad act has been established by sufficient evidence as we do all factual findings by a trial court. We defer to a trial court's factual findings if supported by substantial and competent evidence in the record. *State v. Porter*, 130 Idaho 772, 789, 948 P.2d 127, 144 (1997). In this case, Reid does not challenge the existence of the prior bad acts as established facts. Therefore, we address only the second part of the first tier--the relevancy determination. Whether evidence is relevant is an issue of law. *State v. Atkinson*, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993). Therefore, when considering admission of evidence of prior bad acts, we exercise free review of the trial court's relevancy determination. *Id.*

The second tier in the analysis is the determination of whether the probative value of the evidence is substantially outweighed by unfair prejudice. *Grist*, 147 Idaho at 52, 205 P.3d at 1188. When reviewing this tier we use an abuse of discretion standard. *Id.* When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

In *Grist*, our Supreme Court explained that a defendant's other misconduct may also be relevant to prove a common scheme or plan if it embraces "two or more crimes *so related to each other* that proof of one tends to establish the other, knowledge, identity, or absence of mistake or accident." *Grist*, 147 Idaho at 54–55, 205 P.3d at 1190–91. Thus, in child molestation cases, "there must be evidence of a common scheme or plan beyond the bare fact that sexual misconduct has occurred with children in the past." *State v. Johnson*, 148 Idaho 664, 668, 227 P.3d 918, 922 (2010). The *Johnson* case provides an example of insufficient similarity to render prior acts relevant to demonstrate a common scheme or plan. There, the victims in both the charged offense and the uncharged act were about seven to eight years old, viewed the defendant as a familial authority figure, and were asked to engage in the same type of sexual contact. *Id.* at 669, 229 P.3d at 923. The Court held that these similarities were "sadly far too unremarkable to demonstrate a 'common scheme or plan' in Johnson's behavior." The Court noted that "[t]he facts that the two victims in this case are juvenile females and that [defendant]

is a family member are precisely what make these incidents unfortunately quite ordinary." *Id.* Prior acts that bear only general similarities to the charged offense are more aptly described as inadmissible evidence merely demonstrating a defendant's predisposition to commit the type of crime charged. *Id.* at 669 n.5, 227 P.3d at 923 n.5. The Supreme Court in *Grist* cautioned that "the trial courts of this state . . . must carefully examine evidence offered for the purpose of demonstrating the existence of a common scheme or plan in order to determine whether the requisite relationship exists." *Grist*, 147 Idaho at 55, 205 P.3d at 1191.

Here, Reid contends that his case is controlled by *Johnson* and that the similarities between his alleged conduct involving M.T. and his conduct revealed through the testimony of T.V. and A.T. were too general in nature to support admissibility of the evidence as part of a common scheme or plan. We disagree. What the *Grist* Court found to be problematic was that the "exception" previously carved out of Rule 404(b) in child sex abuse cases allowed other acts evidence to be admitted if only the barest of similarities between the charged conduct and the other acts evidence were present. *State v. Truman*, 150 Idaho 714, 722, 249 P.3d 1169, 1177 (Ct. App. 2010). Likewise, the *Johnson* Court held that the Rule 404(b) evidence at issue should have been excluded because of the presence of only general similarities. The *Johnson* Court, however, noted that commentators have identified three theories of how courts could require previous bad acts to be linked to the charged conduct in order to establish a common plan under Rule 404(b):

> First, the most permissive theory is that the previous acts must simply share some physical and temporal characteristics tending to show a common methodology, whether consciously chosen or not. Second, the court might require acts to share a common methodology and that there must be evidence the perpetrator *consciously chose* those common techniques. Third, and most restrictive, the court could require the prior acts to actually be linked to the charged conduct as part of an intentionally conceived grand design to achieve a specific criminal objective. Edward J. Imwinkelried, *Using a Contextual Construction to Resolve the Dispute over the Meaning of the Term "Plan" in Federal Rule of Evidence 404(b)*, 43 U. Kan. L. Rev. 1005, 1011-16 (1995).

Johnson, 148 Idaho at 668 n.3, 227 P.3d at 922 n.3.

At present, the Idaho Supreme Court has not articulated a choice between these three alternatives, *id.*, but application of any of them shows that the substantial similarities in Reid's conduct with regard to the three girls evidenced a common scheme or plan. Beyond the fact that M.T., T.V., and A.T. were all Reid's stepdaughters, the district court found many similarities

between the sex abuse described by M.T. and the abuse described by T.V. and A.T. Those similarities found by the district court included that Reid inserted his fingers in their vaginas, requested oral sex, had them masturbate him, performed oral sex on them, attempted anal sex with them, sometimes used a purple vibrator, and avoided vaginal sex. The district court also found marked similarities in the grooming techniques employed by Reid, starting with kissing the girls' necks and ears and progressing to supervision and management of their menstrual cycles, which included instruction on how to use and not use tampons, physical examinations of their vaginas by Reid with his hands to check for "lumps," and Reid actually inserting tampons into the girls. This grooming also progressed through the showing of pornography to the victims. The court further found numerous similarities in the control techniques used by Reid, including alienating the girls from their biological fathers, exhibiting extreme jealousy of their male friends, spying on their interactions with boys and others, and, during periods of abuse, giving them special treatment and privileges not afforded the other children in the household. The district court allowed the witnesses to testify to these matters, however, excluded dissimilar grooming, sexual, and control conduct. Because the district court found that the charges involving V.R. as a victim did not share the identified similarities, it limited the jury's use of this evidence to the charges involving M.T. as a victim.

The similarities identified by the district court in this case go well beyond the general similarities found insufficient in *Johnson*. We find no error in the district court's conclusion that, with respect to the M.T. charges, Reid's conduct with T.V. and A.T. evidenced a common methodology and technique in grooming, controlling and abusing his stepdaughters, and that the quantum of evidence was sufficiently detailed and particular to render the challenged evidence admissible to establish a common scheme or plan.

Reid also challenges the district court's conclusion that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. The district court found the probative value of the evidence was substantial and recognized the risk of unfair prejudice, but reduced the danger of that unfair prejudice by giving a limiting instruction expressly telling the jury that it was not to use the testimony of T.V. and A.T. for propensity purposes. The district court concluded therefrom that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. We conclude no abuse of discretion has been shown in this determination.

C. Prosecutorial Misconduct--Preserved by Objection

As part of its Rule 404(b) ruling, the district court held that the prosecution was not to ask A.T. whether the defendant had requested vaginal sex. At trial, the prosecutor asked the question and the witness answered in the affirmative. Reid objected. The district court sustained the objection, denied Reid's motion for a mistrial and gave an immediate curative instruction telling the jury to entirely disregard the question and the answer and that the evidence was to play no part in their deliberations or discussions.

On appeal, Reid asserts that the prosecutor's misconduct warrants reversal of his convictions. Violation of a district court order governing the presentation of evidence may constitute misconduct. *State v. Field*, 144 Idaho 559, 572, 165 P.3d 273, 286 (2007); *State v. Erickson*, 148 Idaho 679, 684, 227 P.3d 933, 938 (Ct. App. 2010); *State v. Martinez*, 136 Idaho 521, 525, 37 P.3d 18, 22 (Ct. App. 2001); *State v. Agundis*, 127 Idaho 587, 594-97, 903 P.2d 752, 759-62 (Ct. App. 1995). Where improper testimony is introduced into a trial and the trial court promptly instructs the jury to disregard such evidence, it is ordinarily presumed that the jury obeyed the court's instruction entirely. *State v. Grantham*, 146 Idaho 490, 498, 198 P.3d 128, 136 (Ct. App. 2008); *State v. Hill*, 140 Idaho 625, 631, 97 P.3d 1014, 1020 (Ct. App. 2004). Where a court gives a curative instruction, the appellate court may consider that factor in determining whether the alleged error is reversible. *Grantham*, 146 Idaho at 498, 198 P.3d at 136. If the propriety of an instance of prosecutorial misconduct at trial is preserved for appellate review by defense objection and misconduct is found, harmless error review applies. Specifically, the State bears the burden of persuading the appellate court "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).

Here, the nature of the misconduct was not egregious and the evidence elicited was not of such nature as to overcome the presumption that the jury followed the district court's instruction to disregard the evidence. We conclude beyond a reasonable doubt that the error complained of did not contribute to the verdicts obtained.

D. Prosecutorial Misconduct--Fundamental Error

Reid asserts that the prosecutor was guilty of misconduct in certain instances of his questioning during voir dire and in statements made during opening and closing arguments. Reid made no objection to any of this alleged misconduct at trial. Trial error ordinarily will not

be addressed on appeal unless a timely objection was made in the trial court. *State v. Adams*, 147 Idaho 857, 861, 216 P.3d 146, 150 (Ct. App. 2009). This limitation "serves to induce the timely raising of claims and objections, which gives the [trial] court the opportunity to consider and resolve them." *Puckett v. United States*, 556 U.S. 129, ___, 129 S. Ct. 1423, 1428 (2009). Because Reid raises his claims of error for the first time on appeal, to obtain our review of these issues, he must establish that they are reviewable under Idaho law as fundamental error.

In *Perry*, 150 Idaho 209, 245 P.3d 961, the Idaho Supreme Court re-examined the fundamental error doctrine and adopted a definition of the types of error for which review will be provided on appeal in the absence of a timely objection in the trial court. The Supreme Court stated that to obtain relief on appeal for fundamental error:

> (1) the defendant must demonstrate that one or more of the defendant's unwaived constitutional rights were violated; (2) the error must be clear or obvious, without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision; and (3) the defendant must demonstrate that the error affected the defendant's substantial rights, meaning (in most instances) that it must have affected the outcome of the trial proceedings.

Id. at 226, 245 P.3d at 978 (footnote omitted). Thus, on a claim of fundamental error, a defendant must first show that the alleged error "violates one or more of the defendant's unwaived constitutional rights" and that the error "plainly exists" in that the error was plain, clear, or obvious. *Id.* at 228, 245 P.3d at 980. If the appellate record is insufficient to show clear error, "the matter would be better handled in post-conviction proceedings." *Id.* at 226, 245 P.3d at 978. If the alleged error satisfies the first two elements of the *Perry* test, the error is reviewable. *Id.* To obtain appellate relief, however, the defendant must further persuade the reviewing court that the error was not harmless; *i.e.*, that there is a reasonable possibility that the error affected the outcome of the trial. *Id.* at 226, 228, 245 P.3d at 978, 980. According to *Perry*, "[w]here a prosecutor attempts to secure a verdict on any factor other than the law as set forth in the jury instructions and the evidence admitted during trial, including reasonable inferences that may be drawn from that evidence, this impacts a defendant's Fourteenth Amendment right to a fair trial," and hence is reviewable as fundamental error. *Id.* at 227, 245 P.3d at 979.

In reviewing allegations of prosecutorial misconduct, we must keep in mind the realities of trial. *Field*, 144 Idaho at 571, 165 P.3d at 285. A fair trial is not necessarily a perfect trial.

Id. In addition, "a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations." *State v. Severson*, 147 Idaho 694, 719, 215 P.3d 414, 439 (2009) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 647 (1974)). Moreover, when an objection to prosecutorial misconduct is not raised at trial, the misconduct will serve as a basis for setting aside a conviction only when the "conduct is sufficiently egregious to result in fundamental error." *Severson*, 147 Idaho at 716, 215 P.3d at 436 (quoting *State v. Porter*, 130 Idaho 772, 785, 948 P.2d 127, 140 (1997)).

With these considerations in mind, we have reviewed Reid's numerous claims of prosecutorial misconduct and conclude that few merit discussion by this Court. Reid's reviewed claims of misconduct occurred during closing argument. Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. *State v. Gross*, 146 Idaho 15, 18, 189 P.3d 477, 480 (Ct. App. 2008); *State v. Timmons*, 145 Idaho 279, 288, 178 P.3d 644, 653 (Ct. App. 2007). Its purpose is to enlighten the jury and to help jurors remember and interpret the evidence. *Timmons*, 145 Idaho at 288, 178 P.3d at 653. Both sides have traditionally been afforded considerable latitude in closing argument to the jury and are entitled to discuss fully, from their respective standpoints, the evidence and the inferences to be drawn therefrom. *State v. Sheahan*, 139 Idaho 267, 280, 77 P.3d 956, 969 (2003); *Gross*, 146 Idaho at 18, 189 P.3d at 480.

Reid asserts that the prosecutor committed misconduct by injecting his personal opinion that the victims were credible into the case when, during his rebuttal closing argument, he said: "What did you hear [defense] counsel say? They got together and got their stories all patched up. They are all the same. Really? I can't do that. I would be disbarred. I would be removed from practice." The prosecutor's statement must be evaluated in light of defense counsel's closing argument that immediately preceded it. *Severson*, 147 Idaho at 719, 215 P.3d at 439. During his closing argument, defense counsel said that the prosecution witnesses "have got their story down pretty well" due to their meetings with the prosecutor in preparation for trial. In this context, while the prosecutor improperly referred to facts not in evidence by representing that he would be disbarred, the prosecutor's responsive statement can be viewed as fair rebuttal to defense counsel's accusation of coached testimony. The prosecutor's statement does not, contrary to Reid's claim on appeal, contain the prosecutor's personal opinion that the State's

witnesses were credible. We conclude that because the prosecutor did not attempt to secure a verdict on any factor other than the law as set forth in the jury instructions and the evidence admitted during trial, there has been no violation of Reid's constitutional rights warranting fundamental error review.

Reid also contends that the prosecutor committed misconduct by apologizing for the graphic nature of his closing argument regarding his recitation of the sexual evidence presented and saying that: "Your skin crawls, doesn't it, when you hear that testimony, that a child would be touched in that manner, cause my skin crawls. We react to it. We can't help ourselves." Reid further asserts misconduct when the prosecutor said: "Can you imagine how teenage girls, your stepdaughters, while using a vibrator on them, while you are watching porn, while you are seducing them, while you are doing these various acts?" Finally, Reid contends that the prosecutor committed misconduct by arguing that the evidence "screams out for a verdict, [d]o not let him leave this courthouse taunting these girls," and that "closure in this case, and the beginning of healing, is to put this man away by a vote of guilty."

Reid claims that he was denied a fair trial in violation of due process because, by making these statements, the prosecutor was appealing to the passions and prejudices of the jury. We hold that while some of these statements may have been inartful or inappropriate, the prosecutor's conduct was not egregious. When viewed in context, we conclude the prosecutor did not attempt to obtain a verdict on any factor other than the law as set forth in the jury instructions and the evidence admitted during trial. Because Reid has failed to establish that his due process right to a fair trial was infringed by these statements, either individually or when considered together, we conclude that fundamental error review is not warranted.

E. Excessive Sentence

The district court imposed concurrent sentences of life with fifteen years fixed upon Reid's convictions on twenty-five counts of lewd conduct with a minor under sixteen and twenty-one counts of sexual battery of a minor child sixteen or seventeen years of age, and a consecutive sentence of life, with eighteen years fixed, upon Reid's conviction for forcible rape. Reid contends that his aggregate sentence of life imprisonment with thirty-three years fixed is unduly harsh and excessive.

An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal,

the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). In order to prevail on a claim that a sentence represents an abuse of discretion, the defendant must show in light of the criteria, [that the] sentence was excessive under any reasonable view of the facts. *State v. Charboneau*, 124 Idaho 497, 499, 861 P.2d 67, 69 (1993); *State v. Small*, 107 Idaho 504, 505, 690 P.2d 1336, 1337 (1984). Where reasonable minds might differ, the discretion vested in the trial court will be respected, and this Court will not supplant the views of the trial court with its own. *Small*, 107 Idaho at 505, 690 P.2d at 1337. In order to prevail, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Stover*, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005).

Reid had previously been convicted in Delaware of molesting one of his stepdaughters. He was shown to have molested each of his stepdaughters, moving on to a younger one when the older one was not to his liking and beyond his ability to control. When M.T. finally refused to submit to his sexual desires, he forcibly anally raped her. Reid was beginning his pattern of behavior with his own biological daughter when his conduct was revealed to Idaho authorities. Under the governing standards, Reid has not shown that his sentences are excessive.

The district court also imposed fines of $1,500 for each of Reid's forty-seven felony convictions, totaling $70,500. Reid claims his fines are excessive. The maximum fine for each

felony conviction here is $50,000. The fines imposed are well within statutory limits and are not excessive.

III.
CONCLUSION

Reid has failed to show error in the district court's exclusion of defense evidence and its admission of Rule 404(b) evidence. Reid has also failed to show that any alleged prosecutorial misconduct violated his constitutional rights. The sentences imposed are not excessive under the circumstances of Reid's case. Reid's judgments of conviction and sentences are affirmed.

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