

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 52292

STATE OF IDAHO,	)	
	)	Filed: August 21, 2026
Plaintiff-Respondent,	)	
	)	Melanie Gagnepain, Clerk
v.	)	
	)	
KRISTIN MARLO ZIMMERMAN,	)	
	)	
Defendant-Appellant.	)	
_____	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Brent L. Whiting, District Judge.

Judgment of conviction for possession of drug paraphernalia, affirmed.

Erik R. Lehtinen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

LORELLO, Judge

Kristin Marlo Zimmerman appeals from her judgment of conviction for possession of drug paraphernalia. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Multiple law enforcement, parole, and probation officers went to Zimmerman's house for a home visit because she was on probation. When the officers arrived, they reported seeing Zimmerman exiting a shed in the backyard. Zimmerman opened a gate and the officers followed her into the backyard. The shed appeared to be lived in, so the officers searched it and found a man hiding in an attached covered area behind the shed. The officers also found methamphetamine and drug paraphernalia, including syringes, pipes, smoking devices, and jars. Additionally, the officers found items with Zimmerman's name, including two credit cards, a letter from a bank,

and a pill bottle. The officers found Zimmerman's family photo and a letter from her then-boyfriend (who was in jail) rolled up with a syringe in a small container.

When the officers searched the main house, they did not find any drugs or paraphernalia. The officers spoke to Zimmerman outside the house. Zimmerman told officers she did not currently live in the shed and that the drugs and paraphernalia found inside the shed did not belong to her. Zimmerman explained there were several other people who lived or stayed in the shed. Zimmerman claimed she had been exiting the shed when the officers arrived because she was asking a woman staying in the shed to babysit Zimmerman's grandchildren while she drove her daughter to work. The other people in the shed told officers they had been looking for a tool. The officers asked what Zimmerman was on probation for, and she responded "possession." Zimmerman was charged with possession of a controlled substance (I.C. § 37-2732(c)(1)), possession of drug paraphernalia (I.C. § 37-2734A), and being a persistent violator (I.C. § 19-2514).

Prior to trial, the State filed a notice of intent to introduce evidence that Zimmerman was on probation at the time of the search. Zimmerman agreed the State had the right to present evidence that she was on probation but argued that the State could not disclose what she was on probation for. The State responded that Zimmerman's probationary status for possession of methamphetamine was relevant to show that she knew what methamphetamine is and the methods in which it is used. The district court allowed the State to present evidence that Zimmerman was on probation without discussing the nature of the offense. However, the district court allowed the State to introduce Zimmerman's statement on the bodycam videos that she was on probation for possession. At trial, the State introduced evidence of a witness's guilty pleas to two felonies for the purpose of impeaching that witness. Zimmerman objected, the district court overruled the objection, and the guilty pleas were admitted.

A jury found Zimmerman guilty of possession of drug paraphernalia but acquitted her of possession of a controlled substance. Because Zimmerman was found not guilty of possession of a controlled substance, the district court entered a judgment of acquittal on the persistent violator sentencing enhancement. Zimmerman appeals.

II. STANDARD OF REVIEW

A trial court's determination as to the admission of evidence at trial will only be reversed where there has been an abuse of discretion. *State v. Zimmerman*, 121 Idaho 971, 973-74, 829 P.2d 861, 863-64 (1992). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

III. ANALYSIS

Zimmerman asserts the district court abused its discretion when it admitted irrelevant evidence of her status on probation for possession of a controlled substance and admitted impeachment evidence of a witness's guilty pleas to two felonies. Zimmerman contends that these evidentiary errors in the aggregate deprived her of a fair trial and the cumulative error doctrine applies. The State responds that the district court did not err and, even if it did, any error was harmless. We hold that Zimmerman has failed to show error in the admission of the challenged I.R.E. 404(b) evidence or the challenged I.R.E. 609 evidence.

A. **Idaho Rule of Evidence 404(b)**

Zimmerman contends the district court abused its discretion by admitting evidence of her statement to officers that she was on probation for "possession" because the statement was irrelevant bad-act evidence not admissible for a nonpropensity purpose. Zimmerman further asserts the district court failed to conduct the proper balancing test to weigh the evidence's probative value against the danger of unfair prejudice. The State responds that the district court's only error with respect to admission of the evidence was its determination that the State could not also admit the nature of the possession charge, i.e., that Zimmerman was on probation for possession of methamphetamine. According to the State, evidence that Zimmerman was on probation for possession of methamphetamine was relevant and admissible to prove knowledge of the controlled substance discovered during the probation search, as well as Zimmerman's intent

with respect to the drug paraphernalia. In response to Zimmerman's argument that the district court failed to weigh the prejudicial nature of the evidence as required by I.R.E. 403, the State asserts this argument is not preserved and, moreover, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.

Idaho Rule of Evidence 404(b), provides, in relevant part:

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

This rule 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). But evidence of another crime, wrong, or act may implicate a person's character while also being relevant and admissible for some permissible purpose, such as those listed in the rule. *See State v. Pepcorn*, 152 Idaho 678, 688-89, 273 P.3d 1271, 1281-82 (2012). When determining the admissibility of evidence to which a Rule 404(b) objection has been made, the trial court must first determine whether there is sufficient evidence of the other acts that a reasonable jury could believe the conduct actually occurred. If so, then the court must consider: (1) whether the other acts are relevant to a material and disputed issue concerning the crime charged, other than propensity; and (2) whether the probative value is substantially outweighed by the danger of unfair prejudice. *Grist*, 147 Idaho at 52, 205 P.3d at 1188; *State v. Parmer*, 147 Idaho 210, 214, 207 P.3d 186, 190 (Ct. App. 2009). On appeal, this Court defers to the trial court's determination that there is sufficient evidence of the other acts if it is supported by substantial and competent evidence in the record. *Parmer*, 147 Idaho at 214, 207 P.3d at 190. In this case, Zimmerman does not challenge the existence of her prior possession conviction as an established fact. Therefore, we address only relevance and unfair prejudice. We exercise free review of the trial court's relevancy determination. *State v. Sheldon*, 145 Idaho 225, 229, 178 P.3d 28, 32 (2008). The trial court's balancing of the probative value of the evidence against the danger of unfair prejudice will not be disturbed unless we find an abuse of discretion. *State v. Norton*, 151 Idaho 176, 190, 254 P.3d 77, 91 (Ct. App. 2011).

After the district court instructed the State that it could not introduce evidence of the crime Zimmerman was on probation for, the State asked the district court if the bodycam videos would need to be redacted to exclude her statement that she was on probation for “possession.” The district court responded, “that’s a little bit different. I mean, that’s a part of the recording, a part of her own statement.” The State argued that the evidence was admissible under I.R.E. 404(b) to show Zimmerman’s “knowledge, absence of mistake, lack of accident, opportunity, all of the other elements that are listed in [I.R.E.] 404(b).” The State further argued the entirety of Zimmerman’s statement--that she was on probation for possession of methamphetamine--should be admitted for the following reasons:

The fact that [Zimmerman] has a history of using methamphetamine does show that she’s aware of what the substance is. It’s not like this is in your garage, someone finds a syringe full of methamphetamine, and says “This person has no history of methamphetamine, has no idea what methamphetamine is.”

It makes it more likely [methamphetamine] could have shown up randomly versus someone who has a history of using drugs, is on probation for using drugs, is the subject of a home visit by probation, and they discover the substance that she’s on probation for. It is straight [I.R.E.] 404(b). It was properly noticed back in July.

Ultimately, the district court determined it would only allow admission of the part of the statement where Zimmerman stated she was on probation for possession. We agree with the State that the entire statement was admissible and that, to the extent the district court erred, the error was in excluding the nature of the possession charge.

To prove the possession of methamphetamine charge, the State was required to prove, beyond a reasonable doubt, that Zimmerman possessed methamphetamine and knew or believed it was a controlled substance.¹ To prove the possession of drug paraphernalia charge, the State was required to prove, beyond a reasonable doubt, that Zimmerman used and/or possessed paraphernalia with the intent to inject, store, and/or inhale a controlled substance. Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence. I.R.E. 401. Evidence that Zimmerman was on probation for possession

¹ We acknowledge the jury acquitted Zimmerman of the possession of a controlled substance charge, but the acquittal is irrelevant to whether the evidence offered to prove the charge was admissible in the first instance.

was relevant to her knowledge as it related to the possession of methamphetamine charge and to her intent with respect to the drug paraphernalia charge--both of which are proper purposes under I.R.E. 404(b). By pleading not guilty to those charges, Zimmerman put at issue every material allegation set forth in the information. Consequently, the State had the burden of proving all of the elements irrespective of any defense that neither the methamphetamine nor drug paraphernalia belonged to Zimmerman. The evidence was, therefore, admissible.

Turning to Zimmerman's argument that the district court failed to properly weigh the potential prejudice of the evidence, we agree that this argument is not preserved. A similar I.R.E. 403 claim was raised in *State v. McGrath*, 169 Idaho 656, 665, 501 P.3d 346, 355 (2021). The defendant in *McGrath* argued that because "the district court failed to conduct a [I.R.E.] 403 balancing analysis prior to admitting the [I.R.E.] 4,04(b) evidence," the district court erred in admitting the evidence. *McGrath*, 169 Idaho at 665, 501 P.3d at 355. In response, the State argued, and the Idaho Supreme Court agreed, that the argument was not preserved because the defendant "did not argue below that the district court erred in failing to conduct balancing under [I.R.E.] 403." *McGrath*, 169 Idaho at 665, 501 P.3d at 355. The same is true in Zimmerman's case; she did not raise an argument to the district court that it erred in failing to conduct balancing under I.R.E. 403. Zimmerman acknowledges as much in her reply brief, but "[n]onetheless" she "maintains the issue of whether the district court properly admitted the evidence under I.R.E. 403 is preserved" because "an objection to evidence as inadmissible propensity evidence under I.R.E. 404(b) encompasses an objection to prejudice under I.R.E. 403." Because this assertion is contrary to *McGrath*, we decline Zimmerman's invitation to consider her unpreserved I.R.E. 403 argument.

We also note that the Court's conclusion in *McGrath* with respect to the preservation requirement for the prejudice portion of the I.R.E. 404(b) analytical framework is consistent with this Court's prior holding that a challenge to the first step of the analysis, which requires sufficient evidence of the other acts that a reasonable jury could believe the conduct actually occurred, must also be specifically challenged in the district court. See *Cooke v. State*, 149 Idaho 233, 240, 233 P.3d 164, 171 (Ct. App. 2010) (clarifying that a district court is only required to specifically articulate a finding that there is sufficient evidence to support a reasonable conclusion that a crime, wrong, or act occurred for purposes of I.R.E. 404(b) if the record on appeal shows the issue was

squarely before the trial court); *see also State v. Cardoza*, 155 Idaho 889, 892, 318 P.3d 658, 661 (Ct. App. 2014) (explaining that, “if the defendant did not dispute in the trial court that the alleged other crimes, wrongs, or acts occurred, then the trial court is not called upon to make a determination on the record to the sufficiency of the evidence of their occurrence”).

Zimmerman has failed to show error in the admission of her statement that she was on probation for possession.

B. Idaho Rule of Evidence 609

Zimmerman argues the district court abused its discretion in admitting improper impeachment evidence of a witness’s guilty pleas to two felonies. Zimmerman asserts the district court should have prohibited this evidence because a guilty plea does not qualify as a conviction for impeachment purposes under I.R.E. 609. The State responds that the district court properly concluded that the witness’s guilty pleas qualified as convictions for purposes of impeachment.

When interpreting a rule of evidence, Idaho appellate courts apply the same standards of construction utilized for statutes. *State v. Trejo*, 132 Idaho 872, 878, 979 P.2d 1230, 1236 (Ct. App. 1999). We begin with an examination of the literal words of the rule and give the language its plain, obvious, and rational meaning. *Id.* A rule, like a statute, should be construed so as that effect is given to its provisions and no part is rendered superfluous or insignificant. *Id.*

Evidence of the fact that a witness “has been convicted of a felony” and “the nature of the felony must be admitted” to attack a witness’s character for truthfulness if the “fact of the prior conviction or the nature of the prior conviction, or both, are relevant to a witness’s character for truthfulness” and the probative value of this evidence outweighs its prejudicial effect. I.R.E. 609(a). The witness at issue in this case had pled guilty to two felonies, although the nature of the felonies is unclear. Counsel for Zimmerman represented that the witness had pled guilty to possession of a controlled substance and burglary; however, on direct examination, the witness testified that he had pled guilty to frequenting a place where drugs are used and resisting or obstructing an officer. Because Zimmerman does not contend that the felonies were not relevant to the witness’s character for truthfulness, or that the prejudicial effect outweighed the probative value, the nature of the felonies do not impact our analysis. Instead, our analysis will focus on Zimmerman’s claim that the felonies could not be used to impeach because the witness had yet to

be sentenced and, consequently, a judgment of conviction had not been entered at the time the witness testified in Zimmerman's defense.

The Idaho Supreme Court has rejected the proposition that a guilty plea does not constitute a conviction. See *United States v. Sharp*, 145 Idaho 403, 179 P.3d 1059 (2008). A conviction occurs by a jury verdict finding the defendant guilty or upon a plea of guilty. *Id.*, at 404, 179 P.3d at 1060. If the word "conviction" meant judgment of conviction, it could not precede punishment because a judgment of conviction includes the punishment. *Id.* at 404-05, 179 P.3d at 1060-61. Zimmerman acknowledges the Idaho Supreme Court's holding in *Sharp*, and the district court's reliance on it, but claims that the reliance was "misplaced." According to Zimmerman, *Sharp* "may outline the parameters of a 'conviction' for the Idaho Code," but it "does not dictate the meaning of 'conviction' for I.R.E. 609." Zimmerman contends our opinion in *State v. Hochrein*, 154 Idaho 993, 303 P.3d 1249 (Ct. App. 2013) illustrates this point. We disagree.

In *Hochrein*, the defendant argued that the holding in *Sharp* "supports his claim that for the purposes of impeachment under [I.R.E.] 609, an outstanding withheld judgment . . . *can* be utilized unless and until the witness has been granted the relief of withdrawing his or her plea, or setting aside the underlying conviction pursuant to [I.C. §] 19-2604." *Hochrein*, 154 Idaho at 1003, 303 P.3d at 1259. Although we rejected that argument, noting that *Sharp* did not reference I.R.E. 609, we also noted the holding in *Sharp* "is that an outstanding withheld judgment qualifies as a *conviction* pursuant to Idaho law." *Hochrein*, 154 Idaho at 1003, 303 P.3d at 1259. The Court in *Sharp* reached that conclusion not because there was some form of judgment entered, but because a conviction is the result of a guilty plea or a finding of guilt. *Sharp*, 145 Idaho at 404, 179 P.3d at 1060. This conclusion was a necessary predicate to the Court's holding that a withheld judgment is a conviction. *Id.* at 407, 179 P.3d at 1063. We emphasized this point in *Hochrein*:

Application of *Sharp* makes clear that because [the witness] had not yet been granted the relief of withdrawing her guilty plea pursuant to Idaho Code § 19-2604, she still had a *conviction* for felony possession of a financial transaction card. However, although Hochrein attempts to conflate the concepts of conviction and judgment, *Sharp* makes it clear they are separate. Thus, regardless of the continued existence of a "conviction," there was in place a withheld judgment, which [I.R.E.] 609 explicitly excludes from being utilized to impeach pursuant to the rule.

Hochrein, 154 Idaho at 1003 n.8, 303 P.3d at 1259 n.8.

Hochrein is also instructive on Zimmerman's contention that a guilty plea must be inadmissible as a conviction under I.R.E. 609(a), otherwise I.R.E. 609(c) would be superfluous. Idaho Rule of Evidence 609(c) protects convictions that resulted in a withheld judgment from being used to impeach. It also protects convictions that were vacated, pardoned, or annulled. But nothing in I.R.E. 609 prohibits the use of convictions *before* entry of the withheld judgment, vacation, pardon, or annulment. *See Hochrein*, 154 Idaho at 1003, 303 P.3d at 1259 (holding that, "because there *was in place a withheld judgment* as to [the witness's] conviction, under the plain language of [I.R.E.] 609 it could not be utilized to impeach") (emphasis added). Indeed, any conviction could potentially be vacated, pardoned, or annulled at some point. This does not mean a conviction is inadmissible based on such potential. If that were true, I.R.E. 609(a) would be superfluous.

Zimmerman has failed to show the district court erred in allowing evidence of the witness's prior guilty pleas for impeachment purposes pursuant to I.R.E. 609.

C. Cumulative Error

Zimmerman contends that the cumulative error doctrine applies here, necessitating a reversal of her conviction. Under the doctrine of cumulative error, a series of errors (harmless in and of themselves) may in the aggregate show the absence of a fair trial. *State v. Adamcik*, 152 Idaho 445, 483, 272 P.3d 417, 455 (2012). However, a necessary predicate to the application of the doctrine is a finding of more than one error. *Id.* Zimmerman has failed to demonstrate at least two errors, a necessary predicate to the application of the cumulative error doctrine. As such, she is not entitled to relief based on cumulative error.

IV.

CONCLUSION

Zimmerman has failed to show the district court erred in admitting evidence that she was on probation for possession or in admitting evidence of a witness's prior guilty pleas for impeachment purposes. Because Zimmerman has failed to show any evidentiary error, she has necessarily failed to show cumulative error. Accordingly, Zimmerman's judgment of conviction for possession of drug paraphernalia is affirmed.

Chief Judge TRIBE and Judge FLEMING, **CONCUR.**