

SUMMARY STATEMENT

State v. Leavitt
Docket No. 49980

This case concerns Idaho Rule of Evidence Rule 404(b), the rule governing the admissibility of evidence concerning a defendant's prior bad acts. Travis Ray Leavitt was charged with the statutory rape of a 17-year-old girl. He was 34 years old at the time of the alleged incident. Shortly before trial, and again after the trial had commenced, the State disclosed new testimonial evidence regarding Leavitt's past criminal record that it intended to use at trial to prove a common scheme or plan. Leavitt objected, arguing that the disclosure was untimely under the rules, was not offered for a proper purpose, and that the evidence should be excluded as unfairly prejudicial under the Rule 403 balancing test. The district court overruled Leavitt's objections and admitted the evidence.

Leavitt appealed his conviction on the basis that the district court allowed impermissible propensity evidence to be presented to the jury, including evidence of his criminal sexual history. Additionally, Leavitt asserted that even if the admission of such evidence were proper under Rule 404(b), (1) the State failed to show good cause for disclosing the evidence after the trial began and (2) all the evidence should have been barred as unfairly prejudicial under Rule 403. The Idaho Court of Appeals vacated Leavitt's conviction and ordered a remand for a new trial. The Idaho Supreme Court granted the State's petition for review.

The Idaho Supreme Court reached a similar result as the Idaho Court of Appeals but employed a different analysis. The Court concluded that the district court erred in admitting testimony concerning Leavitt's prior criminal sexual offenses because it failed to find good cause for the prosecutor's late disclosure of this evidence, as required by Rule 404(b)(2)(B). Further, the Court also concluded that the district court erred in admitting testimony indicating Leavitt was a sex offender because such evidence was not offered for a valid, non-propensity purpose. Under Rule 403, the Court concluded that the district court also erred when it found that the probative value of Leavitt's prior criminal sexual offenses was not substantially outweighed by a danger of unfair prejudice.

The Court affirmed, pursuant to Rules 401 and 404(b), the district court's decision to admit the proffered statements that Leavitt had a "hit list," he "couldn't own a gun because he was a felon," and he was "not going back to prison," because they were admissible for a non-propensity purpose—that of explaining the victim's delay in reporting the crime to the police. However, on remand, the district court must still conduct a Rule 403 balancing test.

Since the Court concluded that the errors of the district court were not harmless beyond a reasonable doubt, the Court vacated Leavitt's judgment of conviction and remanded the matter to the district court for further proceedings consistent with the opinion.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******