

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-22-492

STATE OF MONTANA,
PLAINTIFF and APPEALEE,

v.

ROBERT ERICKSON,
DEFENDANT and APPELLANT.

On Appeal from the District Court of the
First Judicial District of the State of Montana,
Lewis and Clark County

APPEARANCES:

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ISSUES PRESENTED

- I. DID THE DISTRICT COURT ERR WHEN IT ALLOWED 404B EVIDENCE REGARDING THE DEFENDANT'S PAST ALLEGATIONS OF ANIMAL CRUELTY?**

STATEMENT OF CASE

Robert Erickson was charged by information with the charge of Aggravated Animal Cruelty, a felony on July 26, 2021 (District Court Record). The Robert was arraigned on July 27, 2021. On April 25th through the 27th 2022, Robert was tried before a jury of his peers. (Transcripts of the trial, generally). On April 27, 2022, the jury returned a verdict of guilty. On June 22, 2022, the Defendant appeared before Judge Seeley and was sentenced to a six-year deferred imposition of sentence. (Judgment Exhibit A). The Defendant appeals his conviction.

STATEMENT OF THE FACTS

Robert was charged by information with aggravated animal cruelty pertaining to the care of a number of horses under his charge in Lewis and Clark County. Erickson proceeded to trial on April 25, 2022. At the end of the day on April 25, 2022 and outside the presence of the jury, the government mentioned its intention to present evidence of a prior animal cruelty case out of Phillips County that involved Robert and his son (Transcript of Day One, Page 261, lines 11-16).

The prior allegations were included in the affidavit and provided to the defense in discovery (Transcript of Day One, Page 261, lines 17-19). The defense objected to the admission of the prior acts, noting that the

government had other means of proving knowledge and intent. (Transcript of Day One, page 262, lines 9-12).

The prior allegations were animal cruelty charges involving horses that were resolved by a deferred prosecution agreement for both Robert and his son Alan. (Transcript of Day One, Page 262, lines 19-25). Alan specifically admitted his neglect led to the death of one horse. After being asked, by the government regarding concerns with the care of the horses, and Erickson denying it, the government outside the jury asked the court to allow prior accusations of animal cruelty be brought before the court. (Transcript of Day Three, Page 62, lines 1-20). The defense objected under Rule 403 that it was unduly prejudicial (Transcript of Day Three, Page 62, lines 22).

The Court, over defense objection, allowed the testimony.

STANDARD OF REVIEW

Trial courts have broad discretion to decide “all questions of law, including the admissibility of testimony ... [,] other rules of evidence [,]” and “related statutory and jurisprudential rules.” Section 26-1-201, MCA; *State v. McGhee*, 2021 MT 193, ¶ 10, 405 Mont. 121, 492 P.3d 513. The standard of review for evidentiary decisions is for an abuse of discretion, leaving them undisturbed unless made “arbitrarily without the employment of

conscientious judgment or exceeding the bounds of reason, resulting in substantial injustice.” *State v. Derbyshire*, 2009 MT 27, ¶ 19, 349 Mont. 114, 201 P.3d 811 ¶ 19. Any rationale based upon a conclusion of law, is review *de novo*, “according no measure of deference to the district court.” *State v. Guill*, 2010 MT 69, ¶ 21, 355 Mont. 490, 228 P.3d 1152

SUMMARY OF THE ARGUMENT

The admission of the prior accusations of animal cruelty regarding Robert were unduly prejudicial to the defendant and should not have been admitted. Such evidence was likely to lead a jury to convict Robert because he was a bad man and not because his involvement in the care of the animals in this particular case.

ARGUMENT

THE DISTRICT COURT ERRED WHEN IT ALLOWED 404B EVIDENCE REGARDING THE DEFENDANT’S PAST ALLEGATIONS OF ANIMAL CRUELTY

Montana Rule of Evidence 403 is grounds for excluding otherwise admissible evidence which poses a danger of unfair prejudice that substantial outweighs the evidence’s probative value. The prejudicial effect of relevant evidence will substantial outweigh the probative value when the evidence will prompt the jury to decide the case on an improper basis. *State v. Southern* 1999 MT 94, ¶ 39, 294 Mont. 225, 980 P.2d 3.

Montana Rules of Evidence 402, 403, and 404 were modeled on, and are identical in relevant respects to the Federal Rules of Evidence 402, 403 and 404. *State of Montana v. Eighteenth Judicial District*, 2010 MT 263 at ¶ 47.

Not only does the prejudicial nature of the evidence need to be determined, but it needs to be weighed against the “probative value” of the evidence. The probative value of evidence correlates inversely to the availability of other means of proving the issue for which the prejudicial evidence is offered. *See* Advisory Committee's Notes to Fed. R. Evid. 403 and Fed. R. Evid. 404(b); and M. Graham, *Handbook of Federal Evidence*, § 404.5, at 213 (1981).

This means of determining probative value was clearly expressed by the United States Fifth Circuit Court of Appeals in *United States v. Beechum*, 582 F.2d 898, 914 (5th Cir. 1978):

Probity in this context is not an absolute; its value must be determined with regard to the extent to which the defendant's unlawful intent is established by other evidence, stipulation, or inference. It is the incremental probity of the evidence that is to be balanced against its potential for undue prejudice. Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S.Cal.L.Rev. 220, 234-35 & n.52 (1976); *see United States v. Baldarrama*, 566 F.2d 560, 568 (5th Cir. 1978). Thus, if the Government has a

strong case on the intent issue, the extrinsic offense may add little and consequently will be excluded more readily.

It is the Defendant's position that the prior bad acts weren't properly weighed by the court and the district court failed to do so. Part of the State's argument for admitting the prior bad acts was that "prior animal neglect was relevant for the absence of mistake or knowledge" (Transcript of Day One, page 266, lines 18-20). In support of that contention, the government cited *State v. Criswell*, 2013 MT 177 (Transcript Day One, page 266, lines 17-18). The defense reviewed the animal cruelty case under the same name and there doesn't be any support for the government's contention. The State intended to make the defendant look like a bad person to garner a conviction rather than establish the defendant's particular conduct was illegal. Further, the State needed to show that it cannot provide evidence to support a particular element by other means and it failed to present that evidence to the jury.

The State submitted that evidence to the jury to show the defendant's character as a "bad actor" and his conformity with that type of character. Evidence which is specifically prohibited by Rule 404(b)

Evidence of other crimes, wrongs, or acts must be excluded because "prior acts or crimes are highly prejudicial to the defendant, and usually

irrelevant for purposes of the charged crime.” *State v. Derbyshire*, 2009 MT 27, ¶ 51, 349 Mont. 114, 201 P.3d 811 (quoting *State v. Croteau*, 248 Mont. 403, 407, 812 P.2d 1251, 1253 (1991), and citing *State v. Ray*, 267 Mont. 128, 133–34, 882 P.2d 1013, 1016 (1994)); see also *State v. Lacey*, 2010 MT 6, ¶ 31, 355 Mont. 31, 224 P.3d 1247 (citing M.R. Evid 404(b)).

The rule barring proof of other crimes “should be strictly enforced in all cases where applicable, because of the prejudicial effect and injustice of such evidence, and should not be departed from except under conditions which clearly justify such a departure.” *Derbyshire*, ¶ 22. This rule is to ensure that a defendant is not convicted because he is an unsavory person or has a defect of character that makes him more likely to have committed the charged offense.” *Derbyshire*, ¶ 22. The state should not have been allowed to bring up the prior accusations and which smeared the defendant.

CONCLUSION

The admission of the prior accusations of animal cruelty against the defendant were unduly prejudicial and likely enflamed the jury. The conviction of the defendant should be reversed, and the matter returned to the district court for further proceedings.

Dated this 12 day of December 2022.

RESPECTFULLY SUBMITTED,


A handwritten signature in blue ink, appearing to read "Carl B. Jensen Jr.", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Brief of Appellant to opposing counsel, Leo Gallagher, 228 Broadway Helena, MT 59601 and Austin Knudsen, Montana Attorney General, 215 N. Sanders Helena, MT 59601

on this 12 day of December 2022.



CARL B. JENSEN JR.
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a courier typeface have no more than ten characters per inch; is double spaced; pages are 8.5 x 11 inches with margins of no less than 1" from the top, bottom and right side and 1.5" from the left margin. The brief does not exceed twenty-one pages, excluding the table of contents, table of authorities, certificate of service and addendum.

DATED this 12 day of December 2022.

A handwritten signature in blue ink, appearing to read 'C. B. Jensen Jr.', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Carl B. Jensen, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 12-12-2022:

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