

STATE OF IDAHO)
 County of KOOTENAI)^{ss}
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 CLERK, DISTRICT COURT

 Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
STACEY LEE WILLIAMS,)
)
 Defendant.)

Case No. **CRF 2006 8433**

**ORDER ON PLAINTIFF'S MOTION
 IN LIMINE RE: IRE 404(b) ISSUE**

I. INTRODUCTION.

This case went to trial on November 9, 2006, resulting in a hung jury on the possession of a controlled substance (methamphetamine) charge. The State requested a new trial, and one has been scheduled. Upon this new trial, the State has filed a Motion in Limine for a determination by this Court to allow evidence, in the State's case-in-chief, of two prior occasions where Williams was arrested for possession of methamphetamine. The Court did not allow such evidence to come in at the first trial.

The state now argues that IRE 404(b) allows admission of this evidence as it is relevant in proving Williams' intent to possess and knowledge of what he possessed (a controlled substance, methamphetamine). Specifically, the State wants a determination in limine that evidence of Williams' 1997 arrest for possession of a controlled substance when police stopped him and found methamphetamine on the ground that had fallen outside of Williams' vehicle. During that encounter, police also found tinfoil (associated

with methamphetamine paraphernalia) inside Williams' car. In that case Williams similar to the present case, denied knowing there was methamphetamine or denied knowledge of the methamphetamine. The State also wants a determination in limine that evidence of Williams 1998 arrest for possession of methamphetamine after law enforcement officers found methamphetamine in his pocket, and again, tinfoil in his car. In that case Williams similarly denied knowing that there was methamphetamine in his pocket. The State argues evidence of these prior events is admissible under IRE 404(b) because it goes toward negating Williams' argument in the present case that he did not know that he had methamphetamine in his pockets.

Williams argues this evidence is inadmissible under IRE 404(b) because it is highly inflammatory and unfairly prejudicial to his case. Williams argues the State is merely trying to assert that he has had problems with methamphetamine in the past and therefore continues to have methamphetamine problems today, which would be propensity evidence. Williams argues such evidence is so prejudicial that it is not outweighed by its probative value, especially looking to the fact that these prior events occurred over eight years ago. Williams also asserts there is a difference between denying knowledge of having a controlled substance versus denying that the substance you possess is in fact a controlled substance. Williams points out that at the first trial he did not testify that he did not know what the substance in the bottle was, but in rather testified he did not know there was anything in the bottle. Williams asserts there is a distinction here between denying that he knew what was in the bottle and denying that he even knew there was anything in it to begin with, and therefore this court should not

allow evidence of past conduct that is not substantially relevant enough to overcome the highly prejudicial impact it will have on the jury.

The State counters Williams' arguments, claiming there is not the distinction (between knowledge of the bottle and knowledge of what was in it) that Williams would have the court believe. Instead, the State argues the evidence will be offered to show that on two different occasions, Williams had methamphetamine in his possession and that he denied knowledge of that methamphetamine on both occasions. The State asserts it is not trying to suggest to the jury that Williams had problems with methamphetamine in the past and therefore the conclusion is that he now has drug problems, but rather the evidence is being offered to show Williams' knowledge of the substance in his own pocket.

II. ANALYSIS.

Evidence of other crimes, wrongs, or acts is not admissible to prove a Defendant's criminal propensity. IRE 404(b); *State v. Palmer*, 110 Idaho 142, 715 P.2d 355 (Ct. App. 1985). However, such evidence may be admissible for a purpose other than prohibited by IRE 404(b); *State v. Yakovac*, 2006 WL 3113540 2006 Opinion No. 77, (Ct.App. November 3, 2006); *State v. Dreier*, 139 Idaho 246, 76 P.3d 990 (Ct.App.2003). IRE 404(b) states that evidence of other crimes, wrongs, or acts is "admissible for the purpose of showing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." IRE 404(b); *State v. Palmer*, 110 Idaho at 146.

The decision to admit evidence of other crimes involves a two-tiered analysis. First, as with all other evidence, the proof must be relevant to a material issue concerning

the crime charged. *State v. Moore*, 120 Idaho 743, 745, 819 P. 2d 1143 (1991). Whether evidence is relevant is an issue of law. *Id.* Second, and only if the evidence is deemed relevant, it must be determined whether the probative value of the evidence is outweighed by unfair prejudice to the Defendant. *State v. Roach*, 109 Idaho 973, 712 P.2d 674 (Ct. App.1985). When the government offers evidence of prior or subsequent crimes or bad acts as part of its case-in-chief, it has the burden of establishing the relevance of the evidence to prove a fact within one of the exceptions to the rule, and that the proper relevant evidence is more probative than it is prejudicial to the Defendant. *United States v. Hernandez- Miranda*, 601 F.2d 1104 (9th Cir. Ct.App. 1979).

One of the elements of the crime of possession of methamphetamine is that the Defendant knew that the substance he or she possessed was methamphetamine. *State v. Blake*, 133 Idaho 237, 985 P.2d 117 (1999); ICJI 403. In other words, possession is a general intent crime requiring only the knowledge that one is in possession of the substance. *Idaho v. Lamphere*, 130 Idaho 630, 945 P.2d 1 (1997); IRE 403; *State v. Yakovac*, 06.23 ICAR at 976.

The Idaho Supreme Court has held that testimony, offered by the defendant, that she did not know the substance she possessed was methamphetamine, was relevant to negate the general intent element of I.C. §37-2732(c)(1). *State v. Yakovac*, 06.23 ICAR at 976. In that case Yakovac was charged and convicted of possession of methamphetamine and the court allowed evidence of a positive urinalysis, taken shortly after arrest, which indicated Yakovac had recently used methamphetamine. Yakovac appealed her conviction arguing the court erred in allowing evidence of the urinalysis under the Idaho Rules of Evidence because the urinalysis results were irrelevant and prejudicial and

because they did not prove possession. The Court of Appeals held that the presence of the drug in her urine indicated that she had taken the drug in the past and thus had the capacity, through prior experience, to know that the substance in the pipe in her jacket was methamphetamine. *Id.* The court reasoned that the State had the burden of proving that the defendant knowingly possessed methamphetamine at the time of her arrest, and evidence of the urinalysis was relevant prove general intent. *Id.* Just as the defendant can produce evidence that he/she did not know that which he/she possessed was methamphetamine to negate the general intent element of I.C. § 37-2732(c)(1), “by corollary, evidence offered by the state that a defendant knew the substance possessed was the controlled substance which he or she is charged with possessing, may also be relevant to prove general intent.”

In *State of Idaho v. Palmer*, 110 Idaho 142, 715 P.2d 355 (Ct. App. 1985), Palmer was convicted of two counts of possession when the district court allowed evidence at trial that tended to show the commission of crimes other than those with which he was charged. 110 Idaho at 145. After a controlled substance was found at Palmer’s residence, the prosecution was allowed to introduce bank deposit slips and money orders showing Palmer handled several thousand dollars during a period of six weeks. Palmer had claimed that he had not know about the controlled substances found at his residence, but the prosecution argued that evidence of such unusual cash flow reflected drug dealings and negated Palmer’s claim of ignorance. The Idaho Court of Appeals held that evidence of the financial transactions were relevant to prove Palmer’s knowledge of the controlled substances in his possession. The Court of Appeals held the evidence was relevant because it tended to make Palmer’s awareness of the controlled substance more

probable than it would have been without such evidence. *Id.* at 146. The Court also held that such evidence was not unfairly prejudicial because there was nothing inherently inflammatory about evidence of financial transactions. *Id.*

When a prior criminal act is relied upon to prove intent or knowledge, similarity between the two events must be shown to establish the threshold requirement of relevance. *United States v. Hernandez-Miranda*, 601 F.2d 1104 (9th Cir. 1979). In *Hernandez-Miranda* the defendant was convicted of possession of heroin with intent to distribute when stopped while driving his car through the port of entry from Mexico to California. Three years prior to that incident, defendant had been arrested and convicted for smuggling marijuana into the U.S. from Mexico when he carried the marijuana in his backpack across the border. The Government offered the evidence of the prior conviction in its case-in-chief after the Court overruled defendant's objection, on the ground that the evidence was relevant to prove defendant's intent or knowledge and thus fell within 404(b). On appeal, the Ninth Circuit Court of Appeals held that in order for evidence of the prior conviction to come in, the Government was required to establish the logical basis from which to infer knowledge of the presence of heroine in the vehicle from evidence that Miranda had smuggled marijuana in a backpack on a prior occasion. *Id.* at 1108. The Court held the admission of evidence was in error because that logical thread was missing, unless common human experience could demonstrate that it is more probable than not that a person who has knowingly smuggled marijuana on his person will know of the presence of contraband concealed in a vehicle. *Id.* The Court held that the inference was not permissible because experience does not permit that connection between the two events to be made. *Id.* The Ninth Circuit further reasoned that a person

who had knowingly carried drugs in a backpack across the border on a prior occasion would not necessarily know that he was carrying drugs in his vehicle on a later occasion. *Id.* The Court held that the greater the dissimilarity of the two offenses, the more tenuous the relevance. *Id.*

The Idaho Court of Appeals held the trial court did not err when it allowed defendant's statement that he had carried methamphetamine in his gym bag in the past to show that he had knowledge that there was methamphetamine in his gym bag in the present case. *State v. Dreier*, 139 Idaho 246, 76 P.3d 990 (Ct.App.2003). The Court of Appeals held Dreier's statement that he had carried methamphetamine in the bag in the past was relevant to both his knowledge of whether the substance found in the gym bag was methamphetamine and to his knowledge of possession of the substance. *Id.* at 253. The Court was not persuaded by Dreier's argument that the danger of unfair prejudice substantially outweighed the probative value of the statement because the statement portrayed him as a "druggie" who was predisposed to commit crimes like the one charged, reasoning that the evidence was highly probative to show that the drugs found in the gym bag belonged to Dreier and that he knowingly possessed them. *Id.*

The two cases cited by the State, *Yakovac* and *Palmer*, are not directly on point, but give some insight as to when evidence of other crimes, wrongs or acts may be admissible under IRE 404(b). In both cases the Court allowed the evidence to come in, reasoning that the acts tended to show the defendants' knowledge of the drugs in their possession. Both courts relied on the fact that evidence tended to make the defendants' awareness of the controlled substance more probable than it would have been without such evidence. Following that reasoning, this Court should look to whether the

circumstances of Williams' prior arrests would make it more probable that the jury would infer the existence of possession on this occasion than it would without such evidence. It is clear that the circumstances of both prior arrests make it more probable that the jury would infer Williams knowingly possessed methamphetamine in the present case. The evidence of the prior crimes is relevant to prove Williams' intent in the present case, and absence of mistake about the controlled substance. However, that does not end the inquiry.

The case most on point is *Hernandez-Miranda*, where the Ninth Circuit Court of Appeals held that the long settled rule of (Federal) Rule of Evidence 404(b) will not allow evidence of prior or subsequent acts when the sole relevancy is to show disposition to commit crimes or to commit the particular kind of crime with which the defendant is charged. Instead, the Ninth Circuit held that there must be a "logical thread" between the prior criminal acts and the current charges, from which the court could infer the defendant had knowledge of the presence of drugs. Here, the State of Idaho is trying to show that there is a common thread between the circumstances of Williams' past arrests for possession of methamphetamine (where he denied knowledge of what he possessed) and the circumstance of his current charge of possession in this case (where he denied knowledge of what he possessed). The State is arguing the common thread is the fact that on two prior occasions, Williams denied knowing he was in possession of the drug when it was found near his car on one occasion and in his pocket on another.

It is important to look at Williams' two prior arrests separately when deciding whether or not such evidence should come in. In 1997, Williams was arrested for possession of methamphetamine when the drug was found *outside* his car, on the ground.

That is different from this case where the drug was found on his person, in his pocket. However, the 1998 arrest seems substantially similar to the present case, where the drugs were found inside Williams' pocket and he denied knowing they were there. Unlike *Hernandez-Miranda*, where the court found there was not a common thread between smuggling marijuana in a backpack on one occasion and concealing contraband in a vehicle on another, Williams' 1998 arrest has the "common thread" required to establish a logical basis from which to infer Williams had knowledge of the presence of methamphetamine in his pocket. One can reasonably infer that a person who has knowingly carried methamphetamine in his pocket on one occasion (and denied the presence thereof), would have knowledge that he is carrying methamphetamine in his pocket when he is caught carrying the drug in the same way on a later occasion.

However, the 1997 arrest seems to be missing that "common thread." In contrast to the 1998 arrest, it is not reasonable to infer that a person who was arrested when methamphetamine was found on the ground outside his car on one occasion, would have knowledge that he was carrying methamphetamine in his pocket on another occasion. The dissimilarity between the two cannot establish the threshold requirement of relevance needed for 404(b). If allowed in, this 1997 arrest would seem to be more squarely used for prohibited propensity evidence.

Thus, the 1997 arrest does not meet the first tier of relevancy under the two-tiered analysis of IRE 404(b). The circumstances of the 1998 arrest are substantially similar to the facts of this case and therefore, that evidence meets the relevancy requirement of 404(b).

Finally, the court must determine under the two-tier analysis, whether the probative value of such evidence is substantially outweighed by the unfair prejudicial effect it may have on Williams. *State v. Buzzard*, 110 Idaho 800, 718 P.2d 1238 (Ct.App. 1986). This weighing process is committed to the sound discretion of the court. *Id.* In this case the probative value is quite high. The unfair prejudicial effect must substantially outweigh that probative value. There are several issues this Court has considered in balancing the unfair prejudicial effect and the probative value. One is the importance of the disputed issue. In this case, the issues of general intent and absence of mistake are very important, indeed central to the case. That balance tips in favor of admitting the 1998 event. Another issue is to analyze how strong the State's case is without such evidence, and the State's need for the evidence. The first trial ended in a hung jury without the evidence. Again, the balance tips in favor of admitting the 1998 event. Another issue is to analyze the similarity and remoteness between the two events. While somewhat remote in time, that remoteness is more than offset by the similarity between the 1998 event and the present event. *See, State v. Marks*, 120 Idaho 727, 819 P.2d 581 (Ct.App. 1991). That balance tips in favor of admitting the 1998 event. Finally, the effectiveness of limiting instructions is to be considered. The Court is confident counsel and/or the Court can craft an appropriate limiting instruction regarding evidence of the 1998 event. Again, that issue tips in favor of admitting the 1998 event.

The probative value of the circumstances of the 1998 arrest is not substantially outweighed by the unfair prejudicial effect it would have on the jury.

III. CONCLUSION AND ORDER.

For the reasons stated above, the probative value of the circumstances of the 1998 arrest is not substantially outweighed by the unfair prejudicial effect it would have on the jury. The 1997 arrest does not meet the first tier of relevancy under the two-tiered analysis of IRE 404(b).

IT IS HEREBY ORDERED Plaintiff's Motion in Limine to admit certain evidence of prior acts of Williams is **DENIED** as to the 1997 event and **GRANTED** as to the 1998 event.

Dated this 15th day of December, 2006.

John T. Mitchell, District Judge

I hereby certify that on the _____ day of December, 2006 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail to:

Prosecuting Attorney – Art Verharen
Defense Counsel – Fiona Kennedy

By _____
Jeanne Clausen, Deputy Clerk of Court