

NO. 64259-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JAKE D. RIDER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HEAVEY

BRIEF OF RESPONDENT

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-1520-1-1000

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TABLE OF CONTENTS

	Page
A. <u>QUESTION PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ER 404(b)</u>	1
1. PURPOSE.....	1
a. Motive.....	2
2. ADMISSIBILITY OF PRIOR BAD ACTS.....	3
3. STANDARD OF REVIEW.....	4
D. <u>ARGUMENT</u>	4
1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING UNDER ER 404(b) EVIDENCE THAT THE DEFENDANT SAID HE KEPT ANIMALS ONLY FOR TAX PURPOSES.....	4
E. <u>CONCLUSION</u>	10

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

United States v. Mullings, 364 F.2d 173
(2d Cir. 1966) 7

Washington State:

State v. Haga, 13 Wn. App. 630,
536 P.2d 648 (1975), *review denied*,
86 Wn.2d 1007, *cert. denied*,
425 U.S. 959, 96 S. Ct. 1740,
48 L. Ed. 2d 204 (1976)..... 2, 6

State v. Dennison, 115 Wn.2d 609,
801 P.2d 193 (1990)..... 3

State v. Foxhoven, 161 Wn.2d 168,
163 P.3d 786 (2007)..... 2

State v. Kennard, 101 Wn. App. 533,
6 P.3d 38 (2000)..... 7

State v. Lough, 125 Wn.2d 847,
889 P.2d 487 (1995)..... 2, 3

State v. Mason, 160 Wn.2d 910,
162 P.3d 396 (2007)..... 4

State v. Matthews, 75 Wn. App. 278,
877 P.2d 252 (1994)..... 5, 8

State v. Newton, 42 Wn. App. 718,
714 P.2d 684 (1986)..... 8, 9

State v. Powell, 126 Wn.2d 244,
893 P.2d 615 (1995)..... 2, 4, 11

<u>State v. Saltarelli</u> , 98 Wn.2d 358, 655 P.2d 697 (1982).....	2, 3
<u>State v. Smith</u> , 106 Wn.2d 772, 725 P.2d 951 (1986).....	3
<u>State v. Suttle</u> , 61 Wn. App. 703, 812 P.2d 119 (1991).....	8, 9
<u>State v. Walker</u> , 75 Wn. App. 101, 879 P.2d 957 (1994), <i>review denied</i> , 125 Wn.2d 1015, 890 P.2d 20 (1995).....	3

Rules and Regulations

Washington State:

ER 404	1, 3, 4, 10
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A. QUESTION PRESENTED

Did the trial court abuse its discretion by admitting under ER 404(b) evidence that the defendant said he kept animals only for tax purposes.

B. STATEMENT OF THE CASE

The State accepts the statement of the case (factual history) as set forth by the appellant in his brief. Where additional information is needed it will be supplemented in the response section of the brief.

C. ER 404(b)

1. PURPOSE

Under ER 404(b), evidence of a defendant's prior bad acts is admissible for limited purposes:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

ER 404(b) is not designed "to deprive the State of relevant evidence necessary to establish an essential element of its case,"

but rather to prevent the State from suggesting that a defendant is guilty because he or she is a criminal-type person who would be likely to commit the crime charged. State v. Foxhoven, 161 Wn.2d 168, 175, 163 P.3d 786 (2007) (quoting State v. Lough, 125 Wn.2d 847, 859, 889 P.2d 487 (1995)).

a. Motive

Motive is an inducement that tempts the mind to commit a criminal act. State v. Saltarelli, 98 Wn.2d 358, 365, 655 P.2d 697 (1982). Motive can demonstrate an impulse, desire, or any other moving power which causes an individual to act. State v. Powell, 126 Wn.2d 244, 893 P.2d 615 (1995). “The human mind searches for a rational explanation for an irrational act. Notwithstanding that motive is not an element of the crime... it is still a permissible area of inquiry.” State v. Haga, 13 Wn. App. 630, 637, 536 P.2d 648 (1975), *review denied*, 86 Wn.2d 1007, *cert. denied*, 425 U.S. 959, 96 S. Ct. 1740, 48 L. Ed. 2d 204 (1976).

2. ADMISSIBILITY OF PRIOR BAD ACTS

To admit evidence of other wrongs, the trial court must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect. State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). In doubtful cases, the evidence should be excluded. State v. Smith, 106 Wn.2d 772, 776, 725 P.2d 951 (1986).

ER 404(b) prior bad acts are admissible only if the evidence is logically relevant to a material issue before the jury, and the probative value of the evidence outweighs any prejudicial effect. State v. Saltarelli, 98 Wn.2d 358, 362, 655 P.2d 697 (1982). Evidence is relevant and necessary if the purpose in admitting the evidence is of consequence to the action and makes the existence of the identified act more probable. State v. Dennison, 115 Wn.2d 609, 628, 801 P.2d 193 (1990). The decision to admit evidence under ER 404(b) falls within the trial court's discretion. State v. Walker, 75 Wn. App. 101, 108, 879 P.2d 957 (1994), *review denied*, 125 Wn.2d 1015, 890 P.2d 20 (1995).

3. STANDARD OF REVIEW

The trial court's ruling to admit evidence under ER 404(b) is reviewed for manifest abuse of discretion such that no reasonable judge would have ruled as the trial court did. State v. Mason, 160 Wn.2d 910, 933-34, 162 P.3d 396 (2007). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

D. ARGUMENT

1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING UNDER ER 404(b) EVIDENCE THAT THE DEFENDANT SAID HE KEPT ANIMALS ONLY FOR TAX PURPOSES.

The defendant was charged with multiple counts of animal cruelty for the death and mistreatment of animals under his care in 2007. Jessica Ashley in 2002 confronted the defendant as to why he was mistreating his animals by underfeeding them and the defendant told her why, "for tax purposes" he provided a motive for his criminal acts.

The prosecutor asked Jessica Ashley "did you ever ask (the defendant) why he wasn't feeding the animals?" Ashley answered

“Yes, I did, I asked.” The prosecutor followed up by asking “When did you ask him?” Ashley’s response was “I asked him, I said why are you not—why do you have animals on your property and he said because it’s a tax write off and I can write it off as a farm.”

4RP 113.

The trial court found that the statements were made by preponderance, clearly identified the limited purpose of introducing the evidence to show motive, not propensity and that the probative value of the evidence outweighed its prejudicial effects. 3RP 20-22. The court took additional steps to limit the use of the evidence by suppressing any testimony relating to the death of one of the animals and complaints regarding animals on the defendant’s property in 2002 around the same time that the defendant made the statement. 3RP 22. Jessica Ashley’s direct examination about events occurring in 2002 was specifically limited to conversations she had with the defendant about her offering to take care of his animals and why he was not feeding his animals. 4RP 113.

The human mind searches for a rational explanation for an irrational act. State v. Matthews, 75 Wn. App. 278, 284, 877 P.2d 252 (1994). In these circumstances, whether the defendant had any motive for the seemingly irrational act becomes a relevant subject

for inquiry; if not, the likelihood of that person having committed the crime is rationally reduced. Notwithstanding that motive is not an element of the crime of murder, it is still a permissible area of inquiry. State v. Haga, 13 Wn. App. 630, 637, 536 P.2d 648 (1975), *review denied*, 86 Wn.2d 1007, *cert. denied*, 425 U.S. 959, 96 S. Ct. 1740, 48 L. Ed. 2d 204 (1976).

A reasonable jury would have to know why the defendant would have underfed his animals. It is a seemingly irrational act. Animals are kept for several purposes, some purely as a food source, others as a commodity, and some are kept as pets for recreation and companionship. Each of these common uses of animals require that they be in good health, that they are fed and free of disease. If the animals were kept by the defendant for any of the aforementioned purposes it would be irrational for him to underfeed or mistreat the animals. There is a presumption that individuals act rationally and therefore any reasonable juror would ask "if these animals were kept as a food source, a commodity, or as a pet why would the defendant underfeed them?" It therefore was important and highly probative as to why the defendant kept animals on his property.

That was the question Jessica Ashley asked the defendant in 2002 and the answer was for tax purposes. The defendant's sole purpose, he confessed in 2002, was that he had animals on his property for tax purposes. He did not have them as pets, as a food source, or a commodity; they were kept for the sole purpose of getting a tax break. The purpose of the animals on the defendant's property was for the financial benefit of a tax break and therefore the health of the animals was not important; they were there to save money, not to sell or to eat.

The defense argues that the State's evidence regarding the tax break "offered nothing more than an inference of poverty." Appellant Brief at pg. 16. The State however made no such inference. The State agrees that offering evidence intended to infer poverty as the sole motive of a crime is improper. "Where the evidence elicited only demonstrates that the defendant is 'poor,' the inquiry is improper. United States v. Mullings, 364 F.2d 173, 176 (2d Cir. 1966). In State v. Kennard, 101 Wn. App. 533, 541, 6 P.3d 38 (2000), the court held that the court may admit evidence of impecuniosities when there is also other evidence to show something beyond the forbidden inference that poverty causes crime.

There was no mention of the defendant's poverty or any even remote inference that he committed the crime because he was poor. The defendant stated that he kept animals for beneficial tax purposes, in response to the question "why he had animals if he wasn't going to properly feed them?" It is a stretch to refer to that probative evidence as "nothing more than an inference of poverty." He explained in his own words why he would have committed the seemingly irrational act of not feeding his animals.

The defense argument relies primarily on the cases Suttle, Mathews and Newton. In State v. Suttle, 61 Wn. App. 703, 812 P.2d 119 (1991), a prosecution for armed robbery, the trial court properly admitted evidence that the defendant was an escapee from a work release program at the time of the robbery. The evidence was admissible for the limited purposes of showing motive and identity. With respect to motive, the court said that as an escapee, the defendant may have needed to get out of the state to avoid detection and therefore "had a more compelling need for money" than did a third party who was also a suspect.

In Mathews, 75 Wn. App. 278, 877 P.2d 252 (1994), evidence of the defendant's financial condition was admissible on cross-examination to show motive for robbery. Evidence included

defendant's employment status and low level of income, extravagant spending on certain items, recent sale of wife's wedding ring, and recent petition for bankruptcy. The court held that the motive was highly probative to explain why the defendant would have committed the crime. It allowed the State to argue that based upon the defendant's dire financial status he had a motive to commit the crime. It was relevant to whether the defendant committed the crime.

In State v. Newton, 42 Wn. App. 718, 714 P.2d 684 (1986), the court upheld the admission of testimony that the defendant, charged with forgery and possession of a stolen credit card, had assumed the identity of the deceased owner of a credit card, racked up charges on the stolen card, and been locked out of another hotel room for non-payment on an earlier occasion.

Suttle, Mathews and Newton are not entirely on point but they do show the court's rationale for the admission of motive evidence. Each case deals with a defendant's need for money as motive for robbery. In each case there are circumstances that show a dynamic shift in their financial status around the time of the charged crime. The defense argues that these cases highlight the court's error because the court did not show the defendant had a

need for quick cash, or that he spent money in excess. Appellant Brief at p. 16.

The defendant misses the point and purpose for the admission of the evidence. As previously stated, the evidence that the defendant kept animals for tax purposes was to explain why he would underfeed and mistreat his animals, a seemingly irrational act. In order to suggest that taking advantage of a tax break is nothing more than an inference of poverty requires the presumption that only poor people are motivated by beneficial tax breaks. That of course is a baseless presumption; whether the defendant was rich or poor has no bearing on whether he would have sought a tax break. It is, however, relevant as to why he would underfeed animals under his care.

E. CONCLUSION

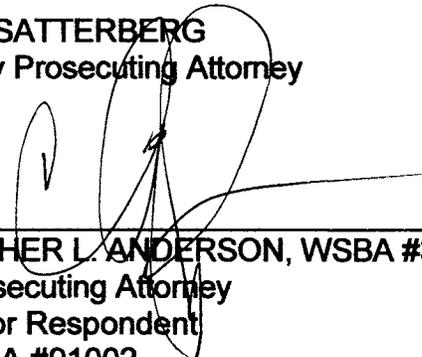
The trial court did not abuse its discretion by admitting under ER 404(b) evidence that the defendant said he kept animals for tax purposes. The trial court's decision was not manifestly unreasonable or based on untenable grounds. State v.

Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). The court should affirm the defendant's conviction.

DATED this 27 day of August, 2010.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Andrew Zinner, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JAKE D. RIDER, Cause No. 64259-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

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Name
Done in Seattle, Washington

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Date 8/31/10

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