

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050251-CA
v.)	
)	F I L E D
Dionicio Blanco Jr.,)	(March 23, 2006)
)	
Defendant and Appellant.)	2006 UT App 125

Second District, Ogden Department, 041901320
The Honorable Ernest W. Jones

Attorneys: Randall W. Richards, Ogden, for Appellant
Mark L. Shurtleff and Matthew D. Bates, Salt Lake
City, for Appellee

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Dionicio Blanco appeals his conviction of assault by a prisoner, a third degree felony. Blanco argues that the district court abused its discretion in admitting evidence that he possessed restricted footwear.

Blanco did not preserve an objection under rule 404(b) of the Utah Rules of Evidence. See Utah R. Evid. 404(b) (precluding admission of evidence of bad acts to prove the character of a person in order to show action in conformity therewith). Based on the record before us, Blanco's trial counsel objected to the evidence only on grounds that it was irrelevant and prejudicial.

Relevant evidence is generally admissible. See Utah R. Evid. 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Utah R. Evid. 401. Relevant evidence may be excluded under rule 403 of the Utah Rules of Evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." Utah R. Evid. 403. "When reviewing rule 403 determinations, we will not reverse the trial court's determination absent an abuse of discretion." State v.

Alonzo, 973 P.2d 975, 980 (Utah 1997) (quotations and citation omitted). "We are inclined to affirm if, absent specific rule 403 findings, we can find some basis in the record for deciding that the trial court's actions were not an abuse of discretion." Id.

The State contended that the evidence that Blanco possessed non-regulation shoes was relevant to the issues of his ability and intent to cause bodily injury by stomping on the victim. See Utah Code Ann. § 76-5-102.5 (2003) (requiring proof of intent to cause bodily injury). The thrust of the case was that Blanco hit the victim in the face, resulting in injuries that necessitated surgical repair of his eye socket. While the State concedes that the probative value of the evidence was low, the prejudicial effect was also low. Evidence that Blanco possessed non-regulation shoes, as opposed to jail-issued rubber sandals, was unlikely to result in prejudice. The district court did not abuse its discretion in admitting the evidence.

Even assuming that the evidence was improperly admitted under rule 403, any error was harmless. "[A]n erroneous evidentiary ruling will lead to reversal only if, absent the error, there is a reasonable likelihood that there would have been a more favorable result for the defendant." State v. Harrison, 805 P.2d 769, 781 (Utah Ct. App. 1991). Given the evidence supporting the conviction, there is no "reasonable likelihood that there would have been a more favorable result for the defendant" if the shoe evidence had not been admitted. Id.

We affirm the conviction.

James Z. Davis, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge