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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 47157-2019**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR01-18-51644**
v.	)	
	)	
CODY RYAN BLAKE,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE NANCY A. BASKIN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Cody Ryan Blake appeals from the district court's order denying his motion in limine. Pursuant to the motion, Mr. Blake moved to admit a letter from a person who wrote that he owned contraband discovered in the house where Mr. Blake was residing, and Mr. Blake was not aware of it and therefore should not have been charged with any crime relating to the discovery of the contraband.

Statement of the Facts and Course of Proceedings

In December of 2018, the State charged Mr. Blake with one count of trafficking in methamphetamine, and one count of possession of drug paraphernalia. (R., pp.30-31.) The contraband was discovered in October of 2018, during a Probation and Parole compliance check of the house where Mr. Blake was residing, which was owned by his father. (R., pp.96-99; Tr., p.30, Ls.3-12.)

Prior to trial, Mr. Blake filed a motion in limine and asked the district court to find Brandon Bankston unavailable, and allow "admission into evidence at jury trial of a letter purportedly written by" Mr. Bankston . . . ." (R., p.40.) In his memorandum in support of the motion, Mr. Blake argued, "Based on Bankston's anticipated assertions of his Fifth and Sixth Amendment rights, the letter is hearsay and Bankston is an unavailable witness." (R., p.43.) Thus, he argued the letter claiming ownership of the contraband was a statement against interest and should be admitted pursuant to I.R.E. 804(b)(3). (R., p.43.) He also asserted that his right to present a complete defense was "implicated by the information in the letter." (R., pp.43-44.) The letter—which Mr. Bankston sent to his attorney from the Ada County Jail—was attached to the memorandum. (R., pp.46-48; Tr., p.41, L.21 – p.42, L.5.)

Mr. Bankston wrote that he was aware someone had been "arrested for a felony amount of a controlled substance" found at Mr. Blake's father's home in Boise. (R., p.46.) He stated that he lived at that house in September of 2018, but he was asked to leave when he did not remain sober. (R., p.46.) He also wrote, "I left a felony amount of methamphetamine . . . stashed around the toys[1] in the room I was staying in. I was unable to come back to the residence to retrieve the meth and nobody knew it was there along [with] some paraphernalia – except myself." (R., p.46.) Mr. Bankston stated that he learned through his girlfriend that Mr. Blake's son had been arrested for methamphetamine, and he did not believe someone else should be held responsible for the drugs. (R., p.46.) He wrote, "Mr. Blake's son" did not have "any knowledge of the substance being in the house because he had no access to the room it was found in nor did he have any knowledge or control of this substance found." (R., pp.46-47.) In closing, he stated that the homeowner "is a very good friend of mine and [I] feel it is my moral obligation to own up for my mistakes." (R., p.47.)

Mr. Blake filed an affidavit stating that he had "learned through Bankston's counsel . . . that Bankston is withdrawing his statement, Bankston will not be interviewed by agents of the defense or the state concerning the issue, and Bankston will not agree to testify in the defendant's criminal case." (R., pp.50-51.) One month later, he filed supplemental arguments in support of the motion in limine and argued that two other exceptions to the rule against hearsay applied: I.R.E. 803(15) and I.R.E. 803(24). (R., pp.64-66.)

Subsequently, the State filed an objection in which it claimed that, after he was arrested, Mr. Blake had made statements about possibly being guilty of constructive possession, Mr. Blake had been at the Ada County Jail at the same time as Mr. Bankston, and Mr. Blake had

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[1] The majority of methamphetamine was found in a "toy dinosaur." (PSI, p.35.)

made statements to the arresting officers about other people who had access to the bedroom being responsible for the methamphetamine, but he did not mention Mr. Bankston. (R., pp.73-74.) It also argued there were not sufficient corroborating circumstances that would indicate the trustworthiness of the letter, as required by I.R.E. 804(b)(3)(B). (R., pp.72-78.) It noted that the Idaho Supreme Court had adopted a seven-factor test to be used in considering the trustworthiness of a hearsay statement such as Mr. Bankston's letter (R., p.75), and it argued the test showed the letter was not trustworthy. (R., pp.76-77.) The district court then held a hearing on the motion, at which Mr. Blake requested the district court's permission to file a reply to the State's objection and to continue the hearing; the court granted those requests. (*See generally* 4/24/19 Tr.)

Mr. Blake then filed a reply and asserted that the State had not established any foundation for its statement of facts, and thus they were not properly in front of the court. (R., p.81.) With respect to the seven-factor test, he argued that the letter was "self-corroborating" because it included, among other things, the "relevant time periods" and "details about where [Bankston] secreted the drugs." (R., p.82.) Further, he asserted that the State had not established a relationship existed between Mr. Blake and Mr. Bankston other than "Bankston lived in the defendant's father's house at relevant times." (R., p.83.) He acknowledged that Mr. Bankston had only made the statement about owning the drugs once but argued, "Bankston was provided with conflict counsel soon after the statement was issued, and . . . counsel would advise Bankston to not repeat the statement, assert his constitutional rights, and say no more." (R., p.83.) Further, he argued there was no benefit to Bankston from writing the letter, and the State's "argument concerning when Bankston and the defendant were allegedly in jail together and what may have transpired between them is pure speculation." (R., pp.83-84.)

The State then filed a supplemental objection to the motion in limine. (R., pp.86-89.) It asserted that I.R.E. 803(15) and I.R.E. 803(24) did not apply in this case. (R., pp.86-88.) And, in an effort to support the factual assertions in its original objection, it submitted affidavits from officers involved with Mr. Blake's arrest and subsequent interview, jail logs showing Mr. Blake and Mr. Bankston had been in the same jail dorm for a short period of time, and an affidavit from the Ada County Jail Investigator confirming that information. (R., pp.91-99.)

The district court held another hearing on May 1, 2019. At that hearing, Mr. Blake testified that he lived at his father's house in early August of 2018 but moved out shortly thereafter and then moved back into the house in late October. (Tr., p.30, Ls.2-17.) He also testified that he knew Mr. Bankston because Mr. Bankston had lived in the "back bedroom" of his father's house in the fall of 2018. (Tr., p.30, Ls.18-25.) After the parties' arguments, the district court decided the motion. For the purpose of its analysis, it assumed Mr. Bankston was unavailable, and Mr. Bankston later asserted his Fifth Amendment right when asked about the methamphetamine on the stand. (Tr., p.56, Ls.2-13, p.71, L.4 – p.72, L.25.)

Ultimately, the district court held that the letter did not meet the trustworthiness requirement of I.R.E. 804(b)(3) and should be excluded. (Tr., p.55, L.24 – p.63, L.5.) Subsequently, Mr. Blake entered a conditional *Alford*[2] plea to one count of trafficking in methamphetamine, which preserved his right to appeal the district court's denial of his motion in limine. (Tr., p.75, L.8 – p.91, L.20; R., p.123.) The district court then imposed a sentence of eight years, with three years fixed. (R., p.124.) Mr. Blake filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.128-30.)

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[2] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

ISSUE

Did the district court abuse its discretion when it denied Mr. Blake motion in limine?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Blake's Motion In Limine

A. Introduction

Mr. Blake asserts the district court abused its discretion when it denied his motion in limine because it failed to reach its holding that Mr. Bankston's letter did not meet the trustworthiness requirement of I.R.E. 804(b)(3) through an exercise of reason because the district court engaged in speculation to reach its holding, and the majority of factors at issue supported admitting Mr. Bankston's letter so a jury could decide the case.

B. Standard Of Review

A district court's decision on a motion in limine is reviewed for an abuse of discretion. *State v. Richardson*, 156 Idaho 524, 527 (2014). In such a review, the Court considers whether the trial court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

C. The District Court Abused Its Discretion When It Denied Mr. Blake's Motion In Limine Because It Failed To Reach Its Decision Through An Exercise Of Reason

Every defendant has a fundamental right to present a complete defense. "The right to present a defense is protected by the Sixth Amendment of the United States Constitution and made applicable to the states through the due process clause of the Fourteenth Amendment." *State v. Meister*, 148 Idaho 236, 239 (2009) (citing *Washington v. Texas*, 388 U.S. 14, 19 (1967)). "This right is a fundamental element of due process of law." *Washington*,

388 U.S. at 19. It includes the right to "offer the testimony of witnesses, and to compel their attendance, if necessary," so that a jury can decide "where the truth lies." *Id.* As noted in *State v. Albert*, 138 Idaho 284, 287 (Ct. App. 2002) (citations omitted), however, the right to present a complete defense is balanced against the State's interests in the criminal trial process because "the Sixth Amendment 'does not confer the right to present testimony free from the legitimate demands of the adversarial system.'" Similarly, this Court has stated that "the Rules of Evidence generally govern the admission of *all evidence* in the courts of this State," and those rules "embody the balancing test which safeguards a defendant's constitutional right to present a defense along with protection of the state's interest in the integrity of the criminal trial process." *Meister*, 148 Idaho at 240.

Therefore, when a defendant wants to present an alternate perpetrator's out-of-court confession, which would be considered hearsay, the confession will be admitted when it meets the standards set forth in I.R.E. 804(b)(3). *Id.* at 241-42. Such a confession will be admitted if the declarant is unavailable as a witness and "a reasonable person in the declarant's position" would have only made the statement if the person "believed it to be true because, when made, it . . . had so great a tendency to . . . expose the declarant to civil or criminal liability." I.R.E. 804(b)(3)(A). If the confession is offered in a criminal case, it must be "supported by corroborating circumstances that clearly indicate its trustworthiness . . . ." I.R.E. 804(b)(3)(B).

In *Meister*, this Court adopted Arizona's standard and seven-factor test for determining trustworthiness. 148 Idaho at 243. It stated that the test would consider "whether evidence in the record corroborating and contradicting the declarant's statement would permit a reasonable person to believe that the statement could be true." *Id.* Thus,

before admitting such a confession, trial courts apply a seven-factor test in order to determine whether the confession is supported by corroborating circumstances that indicate its trustworthiness. This requires trial courts to determine,

> (1) whether the declarant is unavailable; (2) whether the statement is against the declarant's interest; (3) whether corroborating circumstances exist which clearly indicate the trustworthiness of the exculpatory statement, taking into account contradictory evidence, the relationship between the declarant and the listener, and the relationship between the declarant and the defendant; (4) whether the declarant has issued the statement multiple times; (5) whether a significant amount of time has passed between the incident and the statement; (6) whether the declarant will benefit from making the statement; and (7) whether the psychological and physical surroundings could affect the statement.

Id. at 242 n.7.

In this case, it was undisputed that Mr. Bankston's confession was a statement against interest, and he was an unavailable witness. (R., p.75.) Therefore, two of the factors that supported admitting the letter were met, and the district court was simply required to analyze the other five factors. However, the court separated the third factor above into three separate analyses. (Tr., p.57, L.20 – p.60, L.1.)

It stated there was "no corroborating evidence to support this letter other than Mr. Bankston's statement." (Tr., p.57, Ls.21-22.) It also found there was "evidence that contradicts the letter based on the defendant's statement to the officer when he mentioned other people but never mentioned Mr. Bankston as a possibility." (Tr., p.57, L.22 – p.58, L.1.) It went on to say, "The letter doesn't even mention the name of his good friend, it simply mentions the address. It is very vague." (Tr., p.58, Ls.7-9.) As such, it found that, "[T]he letter itself . . . lacks corroborating facts that could be verified either through the owner of when exactly he lived there or the owner of the house even knows this Mr. Bankston." (Tr. p.58, Ls.16-20.)

It found that it was "reasonable" that Mr. Bankston would send the letter to his attorney "to have his attorney follow up." (Tr., p.59, Ls.2-10.) However, it also found there was a relationship between Mr. Bankston and Mr. Blake because the "defendant and declarant were cellmates . . . for a short period of time," and the letter was mailed on December 6th, 2018, "which was a day [Bankston] was in the same cell as the defendant in this case." (Tr., p.59, Ls.15-24.)

The court noted that Mr. Bankston had not claimed responsibility for the contraband multiple times. (Tr., p.60, Ls.2-5.) However, it acknowledged Mr. Blake's argument that it was reasonable for Mr. Bankston not to make the statement again after consulting with an attorney, but it said not making the statement again was "inconsistent with the letter that indicates it's his moral obligation to own up to his own mistakes." (Tr., p.60, Ls.5-14.) It also stated that the amount of time that had passed was "a little bit inconclusive in this case." (Tr., p.60, Ls.17-20.) It said the fact that several months had passed was important, however, because it was "not determinative of the facts that the State has to prove in this case which is that the defendant had knowledge of the drugs and controlled the drugs such that he had possession of them . . . ." (Tr., p.61, Ls.2-7.)

Additionally, the court found there were no facts to support a conclusion that Mr. Bankston would benefit from writing the letter, but it then said, "[I]t could be viewed as the declarant gets a benefit for making a statement in cellmate's favor even though he never has to be subject to liability for that statement." (Tr., p.61, Ls.11-19.) Thus, it said there was "arguably an indirect benefit from the declarant making the statement." (Tr., p.61, Ls.19-20.) Finally, it found that psychological or physical surroundings could affect the statement due to the fact that the two men had been in the Ada County Jail at the same time. (Tr., p.61, Ls.21-25.) Based on

these findings, it held there were not "corroborating circumstances that clearly indicate[d]" the trustworthiness of the letter. (Tr., p.62, L.10 – p.63, L.5.)

The district court did not reach this decision through an exercise of reason for multiple reasons. First, the letter itself contained details that corroborated Mr. Bankston's statement. In fact, it was not vague at all. Rather, the letter specified the address of the home, details as to where Mr. Bankston had hidden the methamphetamine, and the fact that the home was owned by Mr. Blake's father. (R., pp.46-47.) The district court focused on the fact that Mr. Bankston never used the name of the homeowner in the letter, but this is not true. He identified the homeowner as "Mr. Blake." (R., p.46.) The fact that he did not mention his first name did not make the letter vague.

Similarly, the fact that Mr. Blake did not mention Mr. Bankston's name to one of the arresting officers should not have been considered as contradictory evidence. Rather, as the district court even acknowledged, Mr. Blake may have forgotten to mention his name when he talked about people who had access to the room. (Tr., p.58, Ls.2-4.) However, the fact that he mentioned other names supported a finding that other people, including Mr. Bankston, may have had access to the room in question.

Moreover, evidence that Mr. Bankston and Mr. Blake were in the Ada County Jail at the same time did not support the district court's finding that there was a "relationship" between them. (Tr., p.59, L.15 – p.60, L.1.) Indeed, the only actual evidence that Mr. Blake knew Mr. Bankston was Mr. Blake's testimony that he knew him because Mr. Bankston had stayed at his father's house. (Tr., p.30, Ls.18-22.) Using the jail logs to speculate that there was a relationship between the two men was not appropriate. The jail logs did not, and could not, definitively establish that there was a relationship of any kind. Therefore, the court's finding on

this issue was simply guesswork. Further, the district court's reference to the two men being "cellmates" was not proven by the jail logs. Those logs simply showed that the men "shared the same housing unit in Dorm 4" for four days. (R., pp.92-95.) They also show that there were multiple "bunks" in that dorm; Mr. Blake was assigned Bunk 27, and Mr. Bankston was assigned Bunk 20. (R., pp.94-95.) While no floorplan of the dorm was submitted, these facts indicated that there may have been as many as 30 or more bunks in the dorm. Thus, the men were not "cellmates" as that word is traditionally understood, and the Jail Investigator's comment that it was "very likely that the two men met" was also speculative. (R., p.92.)

Further, the fact that Mr. Bankston did not confess again is completely reasonable in light of the fact that he spoke with his attorney soon after he made the statement and, as Mr. Blake argued, "conflict counsel would advise Bankston not to repeat the statement, assert his constitutional rights, and say no more." (R., p.83.) But the district court engaged in more speculation when, instead of limiting its analysis to the fact that there was nothing in the record to support a finding that Mr. Bankston could benefit from writing the letter—it went on to state that "*it could be viewed* as the declarant gets a benefit for making a statement in cellmate's favor even though he never has to be subject to liability for that statement." (Tr., p.61, Ls.11-19. (emphasis added).) And it said there was "*arguably* an indirect benefit from the declarant making the statement." (Tr., p.61, Ls.19-20 (emphasis added).) Again, these were guesses. There was no proof that Mr. Bankston could benefit from writing the letter.

Similarly, there was no proof that Mr. Blake engaged in any sort of coercion or was able to pressure Mr. Bankston to write the letter. Indeed, given the level of security at a jail, such surroundings would likely make any behavior of this nature very difficult. Also, this finding hinged on the prior speculative finding that the two men had a relationship while in the jail. This

was never proven, and there was no video surveillance admitted to show that they even spoke to each other when they were at the jail.

In sum, many of the district court's findings were based on speculation as opposed to facts. Indeed, the district court did not reach its decision through an exercise of reason because there were not enough facts in the record to establish that the letter was not trustworthy. To the contrary, the letter was supported by corroborating circumstances that indicated its trustworthiness, and the balance of factors supported admitting the letter. Mr. Bankston was unavailable; the letter was a statement against his interest that contained detailed information corroborating his statement; there was no proof that there was a relationship between Mr. Blake and Mr. Bankston; and it was very clear that Mr. Bankston could not benefit from making such a statement. In short, the only actual evidence in the record met the standard for trustworthiness because that evidence would permit a reasonable person to believe the letter was true. Therefore, under I.R.E. 804(b)(3), the letter should have been admitted so that a jury could decide the case based on all the relevant evidence.

CONCLUSION

Mr. Blake respectfully requests that this Court reverse the district court's order denying his motion in limine and remand his case for further proceedings.

DATED this 18th day of February, 2020.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

RPA/eas