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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 47157-2019**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-18-51644**
	)	
CODY RYAN BLAKE,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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 judgment of conviction. He challenges the district court's denial of his motion in limine whereby he sought the pre-trial admission of a letter written by a purported alternate perpetrator.

Statement Of The Facts And Course Of The Proceedings

In 2018, Blake was on felony probation and living in a bedroom at his father's house. (Tr., p.30, Ls.3-17; p.87, L.20 – p.88, L.8; PSI, pp.30-31.) A probation and parole officer discovered a picture sent from Blake's Facebook account to another probationer's cell phone that depicted what they suspected to be methamphetamine on a digital scale. (Tr., p.104, L.14 – p.105, L.2; see also PSI, pp.30-31, 209-10.) Officers promptly conducted a compliance check on Blake. (R., p.97; Tr., p.87, L.17 – p.88, L.2; PSI, p.23.) Officers searched Blake's bedroom and found the digital scale, several glass smoking devices, and numerous packages containing a total of approximately fifty-two grams of methamphetamine. (Tr., p.88, L.3 – p.89, L.22; see also PSI, pp.23, 30, 195-220.[1]) The state forensic lab did not analyze the substances from every package, but did confirm that thirty-six grams was methamphetamine. (Tr., p.88, L.8 – p.89, L.22.)

After officers read Blake his Miranda[2] rights, he told them that he had been at his father's house for only a few hours. (R., p.99; Tr., p.89, L.23 – p.90, L.7; PSI, pp.31, 37.) According to Blake's father, however, Blake had been staying there for several months. (Tr., p.89, L.23 – p.90, L.7; PSI, p.37.) Additionally, Blake had registered his father's address as his place of residence

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[1] A majority of the methamphetamine was found hidden inside of a toy dinosaur. (Tr., p.89, Ls.2-12; PSI, pp.95-97.)

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

with probation and parole in February of 2018. (PSI, p.30.) Blake was arrested and taken to the police department to be interviewed. (R., p.97.)

Upon learning that he was being charged with trafficking, Blake requested to go to the emergency room. (R., p.97.) While at the hospital, Blake wanted to discuss his charges with the officers. (R., p.97.) Blake said, "I get it. It was in my room. I'm probably technically guilty of constructive possession because it was in a room that is alleged to be mine. And I don't doubt … I don't not admit that I was supposed to be in that room." (R., p.97 (ellipsis in original); see also Tr., p.90, Ls.8-18.) He continued, "At the very least I might allegedly be fucking … I guess guilty of constructive possession cause constructive possession is knowing it is there and not doing nothing about it." (R., p.97 (ellipsis in original); see also Tr., p.90, Ls.19-24.) During a subsequent interview with a narcotics detective, Blake provided a list of names of people who had access to the bedroom where the methamphetamine was discovered; the list did not include Brandon Bankston's name. (R., p.99.) The state charged Blake with trafficking methamphetamine. (R., pp.30-31.)

Prior to trial, Blake filed a motion in limine seeking the "admission into evidence at jury trial of a letter purportedly written by Brandon Bankston." (R., pp.40-49.) The letter's author claimed that he learned from his girlfriend that officers had discovered a "controlled substance … in the back bedroom" of Blake's father's house. (R., p.46.) He claimed that he had previously stayed in that room but was "abruptly asked to leave" and consequently "left a felony amount of methamphetamine … stashed around the toys," which he had been "unable to come back to the residence to retrieve." (R., p.46.) He wrote, "nobody knew it was there along [with] some paraphernalia except myself." (R., p.46.) He claimed that Blake "could in no way shape or form actually possessed [sic] 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 [and/or] control of this substance found." (R., pp.46-47.) In addition to the letter, Blake's counsel also filed an affidavit in which he attested that he had "learned through Bankston's counsel … that Bankston is withdrawing his statement …." (R., pp.50-51.) Nevertheless, Blake argued that the letter should be admitted pursuant to Idaho Rule of Evidence 804(b)(3). (R., pp.43-44.)

The state objected to Blake's motion in limine and asserted it should be denied. (R., pp.72-78.) The state argued that Bankston's letter lacked "sufficient 'corroborating circumstances [that] clearly indicate the trustworthiness of the statement' as required by I.R.E. 804(3)." (R., p.72.) The state contended that all seven factors that Idaho courts must analyze when considering the trustworthiness of the declarant's statement indicated that the letter lacked corroborating circumstances clearly indicating its trustworthiness. (R., pp.74-77.)

Blake filed a reply. (R., pp.80-85.) He argued that some of the factors supported the admission of the letter while others were "not relevant," and he also argued that the state's arguments were unsupported and speculative. (R., pp.81-85.)

The court held an evidentiary hearing. (R., p.100; Tr., pp.14-69.) During the hearing, Blake briefly testified that both he and Bankston had lived in his father's house at different times during the fall of 2018. (Tr., p.27, L.5 – p.31, L.8.) On cross-examination, Blake admitted that he did not mentioned Bankston's name when he was interviewed by detectives following his arrest. (Tr., p.31, L.11 – p.32, L.15.) The parties then presented arguments. (Tr., p.33, L.3 – p.55, L.22).

Following the testimony and arguments, the court denied Blake's motion. (Tr., p.65, Ls.13-15; p.66, L.24- p.67, L.1). For purposes of the motion, the court assumed that Bankston was unavailable and determined that the statements in the letter were against his penal interest.

(Tr., p.56, Ls.2-22.[3]) The court then analyzed each of the seven factors and concluded that the letter lacked "corroborating circumstances that clearly indicate [its] trustworthiness." (Tr., p.56, L.23 – p.63, L.5.)

Thereafter, Blake entered an Alford[4] plea to trafficking in methamphetamine and preserved his right to appeal the denial of his motion in limine. (R., pp.107-19; Tr., pp.70-95.) The prosecutor set forth the uncontested factual basis for the plea. (Tr., p.87, L.17 – p.91, L.8; p.92, L.5 – p.93, L.11.)

During the sentencing hearing, the district court imposed a unified eight-year sentence, with three years fixed, and entered judgment. (R., pp.122-27; Tr., pp.96-116.)

Blake timely appealed. (R., pp.128-30.)

[3] Blake called Bankston to testify during the subsequent change of plea hearing. (Tr., p.70, L.8 – p.71, L.14.) Bankston invoked his Fifth Amendment privilege against self-incrimination (Tr., p.71, L.18 – p.74, L.4), and the court found that Bankston was an unavailable witness (Tr., p.74, Ls.5-11).

[4] North Carolina v. Alford, 400 U.S. 25 (1970).

ISSUE

Blake states the issue on appeal as:

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

(Appellant's brief, p.5)

The state rephrases the issue as:

Has Blake failed to show that the district court abused of discretion when it determined Bankston's letter is not supported by corroborating circumstances that clearly indicate its trustworthiness and thus denied the motion in limine?

ARGUMENT

Blake Has Failed To Show That The District Court Abused Its Discretion When It Denied His Motion In Limine

A. Introduction

The district court denied Blake's motion in limine to admit Bankston's letter because "it does not fit the trustworthiness requirement of [I.R.E.] 804(b)(3)." (Tr., p.63, Ls.2-5.) Blake asserts the district court abused its discretion when it denied his motion 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." (Appellant's brief, p.6.) According to Blake, "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." (Id.) Blake's argument lacks merit.

Proper application of the seven-factor test adopted in State v. Meister, 148 Idaho 236, 241-43, 220 P.3d 1055, 1060-62 (2009), reveals that Bankston's letter was not supported by corroborating circumstances that clearly indicate its trustworthiness and thus was not admissible pursuant to I.R.E. 804(b)(3). Furthermore, the district court correctly analyzed each of the seven factors when it considered whether Bankston's letter met the trustworthiness requirement of I.R.E. 804(b)(3). The court's findings were based on and supported by evidence in the record, including the letter itself, affidavits, and Blake's testimony. Accordingly, Blake has failed to show that the court did not reach its decision to exclude the letter by the exercise of reason.

B. Standard Of Review

Appellate courts review a decision on a motion in limine for an abuse of discretion. State v. Richardson, 156 Idaho 524, 527, 328 P.3d 504 (2014). Likewise, "[t]he trial court has broad discretion in the admission of evidence, and its judgment will only be reversed when there has

been an abuse of that discretion." State v. Zichko, 129 Idaho 259, 264, 923 P.2d 966, 971 (1996). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. Blake Has Failed To Show That The District Court Abused Its Discretion When It Determined Bankston's Letter Was Not Admissible Pursuant To I.R.E. 804(b)(3)

Hearsay is a statement that "the declarant does not make while testifying at the current trial or hearing" and is offered "in evidence to prove the truth of the matter asserted in the statement." I.R.E. 801(c); see also I.R.E. 801(a) (defining "statement" as either an oral or written assertion). Hearsay statements are not admissible unless they fall under an exception to the Idaho Rules of Evidence or other rules promulgated by the Supreme Court of Idaho. I.R.E. 802. Rule 804(b)(3) is one such exception to the rule against hearsay. See I.R.E. 804.

Rule 804(b)(3) permits the admission of hearsay statements when "the declarant is unavailable as a witness" and:

> (A) [the statement is one that] a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
>
> (B) [the statement] is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

I.R.E. 804(b)(3); see also Meister, 148 Idaho at 241-42, 220 P.3d at 1060-61. The "corroborating circumstances" required by I.R.E. 804(b)(3) "are necessary and must 'clearly indicate the trustworthiness of the statement.'" Meister, 148 Idaho at 242, 220 P.3d at 1061 (quoting State v.

Priest, 128 Idaho 6, 16-17, 909 P.3d 624, 634-35 (Ct. App. 1995)). Idaho courts apply a seven-factor test to analyze the corroboration requirement established in Rule 804(b)(3). Id. at 242, 220 P.3d at 1061. Those seven factors are:

> (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.

Meister, 148 Idaho at 242 n.7, 220 P.3d at 1061 n.7. Ultimately, the court's inquiry, which is "made to assure [itself] that the corroboration requirement of Rule 804(b)(3) has been satisfied, should be limited to asking *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. at 242, 220 P.3d at 1061 (internal quotation omitted) (emphasis in original).

In this case, the district court properly denied Blake's motion in limine on the basis that Bankston's letter did not meet the corroboration requirement established in Rule 804(b)(3). Bankston was an unavailable witness because he invoked his Fifth Amendment privilege against self-incrimination (Tr., p.74, Ls.5-11; see also I.R.E. 804(a)), and the letter is one that would affect his penal interest (Tr., p.56, Ls.14-22[5]). The five remaining factors weigh heavily against the trustworthiness of Bankston's letter.

First, no corroborating circumstances exist which clearly indicate the trustworthiness of the statements in Bankston's letter, and substantial evidence contradicts the letter. Bankston claimed he "left a felony amount of methamphetamine" at Blake's father's house and that Blake

[5] The state conceded below that the statements were against Bankston's penal interest. (R., p.75.)

"could in no way shape or form actually possessed [sic] 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 [and/or] control of this substance found." (R., pp.46-47.) This statement is directly contradicted by Blake's father who told officers that Blake had been staying in the room where the methamphetamine was found for several months and by the probation and parole records that listed Blake's father's address as Blake's permanent place of residence since February 2018. (Tr., p.89, L.23 – p.90, L.7; PSI, pp.30, 37.) The letter is also contradicted by Blake's own statements. He told officers that the methamphetamine "was in my room. I'm probably technically guilty of constructive possession" and "*[a]t the very least* I might allegedly be … guilty of constructive possession cause constructive possession is knowing it is there and not doing nothing about it." (R., p.97 (ellipses in original) (emphasis added); see also Tr., p.90, Ls.8-24.) Blake also provided detectives with a list of names of people who had access to the room where the methamphetamine was discovered, but Bankston's name was conspicuously not on the list. (R., p.99.)

Furthermore, there was a relationship between Blake and Bankston. Blake testified that he knew Bankston and knew that Bankston had resided in the back bedroom of his father's house prior to their respective arrests. (Tr., p.30, Ls.18-22.) Then, after both men were arrested, they were housed together for a brief period of time at the Ada County Jail, including on the day that Bankston mailed the letter from the jail to the public defender's office. (R., pp.46-49, 91-95.)

Second, Bankston did not issue the statement multiple times. He only claimed ownership of the methamphetamine one time – in the letter, which he ultimately recanted. (R., pp.50-51.)

Third, a significant amount of time had passed between the incident and the statement. Bankston's letter was not mailed until approximately six weeks after the discovery of the methamphetamine and was sent while he was housed with Blake in the jail. (R., pp.48, 96-99.)

Fourth, although there is no direct evidence that Bankston received a benefit for claiming ownership of the methamphetamine, it would be reasonable to infer that the letter was the product of a quid pro quo, intimidation, or other arrangement because the two men knew each other and were housed together at the jail when the letter was sent to the public defender's office.

The final factor also weighs in favor of the letter's untrustworthiness. The psychological and physical surroundings could have affected the statement. Again, both Blake and Bankston knew each other and were living in the same housing unit in the days leading up to and the day that the letter was mailed. Because the declarant was housed together with Blake at the jail during the relevant time period, Bankston's psychological and physical surroundings could have affected his statement.

In sum, the evidence in the record contradicts Bankston's letter to such a degree that a reasonable person would not believe that his statements could be true. The letter was not sent until approximately six weeks after the discovery of the drugs, and was sent while the declarant was housed with the defendant in jail. Blake's own statements to police directly contradict the claims in Bankston's letter, and on the day of his arrest Blake did not mention Bankston's name to detectives. Furthermore, Bankston only made these statements one time and ultimately recanted the letter. All of the factors undermine the trustworthiness of the statements in the letter. Thus, contrary to Blake's assertion that the factors weigh in favor of admissibility (Appellant's brief, p.12), proper application of the seven factors shows that Bankston's letter lacks corroborating circumstances that clearly indicate its trustworthiness. Accordingly, the district court did not abuse its discretion when it denied Blake's motion in limine on the basis that the letter did not meet the corroboration requirement for admission pursuant to I.R.E. 804(b)(3).

Blake argues that the district court did not reach its decision through an exercise of reason and that its findings were "based on speculation" and "guesswork." (Appellant's brief, pp.10-15.) Blake's argument lacks merit.

The district court correctly applied the seven factors to Bankston's letter. The court found that Bankston was unavailable and that the statement was against his penal interest. (Tr., p.56, Ls.7-22; p.74, Ls.5-11.) However, the court also found that the third factor weighed in favor of untrustworthiness. The court found that there was no corroborating evidence to support Bankston's letter, but that there was evidence to contradict the letter. (Tr., p.57, Ls.20-22; p.58, Ls.7-20.) The court considered Blake's admissions that he was "[a]t the very least" guilty of constructive possession. (R., pp.96-97; see Tr., p.55, L.24 – p.56, L.2.)

In analyzing the third factor, the court properly considered the fact that Blake did not give Bankston's name to detectives as contradictory evidence. (Tr., p.57, L.22 – p.58, L.1; see Appellant's brief, p.10 (arguing Blake's failure to mention Bankston's name should not have been considered contradictory evidence).) After his arrest, Blake provided officers with a list of names of people who had access to the room where the drugs were discovered. (R., pp.98-99.) But he did not mention Bankston's name despite later testifying that Bankston had "resided in the back bedroom" of his father's house during the fall of 2018. (Tr., p.30, Ls.18-25.) Evidence that Blake knew prior to his arrest that Bankston had access to the room where the drugs were discovered but did not provide that information to investigating officers for purposes of identifying potential alternate perpetrators directly contradicts and undermines the veracity of Bankston's claim that the drugs belonged to him.

Furthermore, the court found that a relationship existed between Bankston and Blake because the two were housed together at the jail, including on the day Bankston mailed the letter.

(R., pp.91-95; Tr., p.59, L.15 – p.60, L.1.) Whether the court referred to Bankston and Blake as "'cellmates' as that word is traditionally understood" is of no consequence. (See Appellant's brief, pp.10-11.) The evidence clearly showed that, prior to his arrest, Blake knew Bankston because he had lived with Blake's father, and that the two men were housed together in the same unit of the jail for four days, including the day the letter was mailed. (R., pp.91-95; Tr., p.30, Ls.18-25.) Thus, the court's finding that there was a relationship is supported by evidence in the record.

With respect to the fourth, fifth, and seventh factors, the court found that they also weighed in favor of the untrustworthiness of the letter. The court found it was "a resounding no" as to whether Bankston issued the statement multiple times. (Tr., p.60, Ls.2-4.) The court noted that Bankston had since recanted the statements he made in the letter. (Tr., p.60, Ls.2-16; R., pp.50-51.) The court also found that the "amount of time that [had] passed between the event at issue and when the statement was made was a little bit inconclusive," but that "the statement was made months after the declarant left the residence." (Tr., p.60, L.17 – p.61, L.10.) The court also found that because Blake and Bankston were housed together when the letter was authored and mailed, the physical and psychological surroundings "could" have affected Bankston's statements. (Tr., p.61, Ls.21-25.)

Finally, with respect to the sixth factor, the court found that "there [are] no facts that this declarant will benefit …." (Tr., p.61, Ls.11-13.) However, it also found that Bankston received an "indirect benefit" for making the statement because he made "a statement in a cellmate's favor even though he never has to be subject to liability for that statement." (Tr., p.61, Ls.11-20.)

Contrary to Blake's assertion, these findings were not based on speculation or guesswork but were based on evidence in the record. This evidence included Bankston's letter, the affidavits submitted by defense counsel and the prosecutor, and the testimony presented by Blake at the

hearing on the motion. (Tr., p.55, L.24 – p.56, L.2; see also R., pp.42-51, 72-78, 86-99; Tr., p.30, L.2 – p.33, L.2.)

Moreover, as the proponent of the hearsay exception, it was Blake's burden to prove that the letter falls within a hearsay exception to be admissible. The burden of proving that a statement falls within a hearsay exception rests upon the proponent of the evidence. See United States v. Arnold, 486 F.3d 177, 206 (6th Cir. 2007) ("As is typical of evidentiary matters, 'the burden of proving that the statement fits squarely within a hearsay exception' rests with the proponent of the hearsay exception ...."); United States v. Samaniego, 187 F.3d 1222, 1224 (10th Cir. 1999) ("The obligation of establishing the applicability of a hearsay exception ... falls upon ... the proponent of the evidence."); State v. Davis, 155 Idaho 216, 219, 307 P.3d 1242, 1245 (Ct. App. 2013) (holding that trial courts must sustain a hearsay objection unless the proponent of the testimony shows that the out-of-court statement upon which the testimony is grounded is not hearsay or identifies an applicable hearsay exception); see also State v. Button, 134 Idaho 864, 868, 11 P.3d 483, 487 (Ct. App. 2000) ("Unavailability of a witness's testimony is a preliminary fact, which must be established by the proponent to the satisfaction of the trial court."). Accordingly, Blake bore the burden to establish that the seven factors weighed in favor of the letter's admission. He failed to do so.

Nevertheless, Blake maintains that certain findings were based on speculation, not evidence in the record. (Appellant's brief, pp.10-12.) For example, Blake argues that the evidence in the record "did not support the district court's finding that there was a 'relationship' between" he and Bankston. (Appellant's brief, p.13.) A lack of evidence regarding what Blake and Bankston's relationship was, or was not, indicates that Blake did not carry his burden of proof with respect to that factor. The same applies for any and all findings that Blake argues the court based

on speculation. Any lack of evidence in the record undercuts Blake's argument that the letter was supported by corroborating circumstances that clearly indicate its trustworthiness.

Finally, Blake contends the "letter itself contained details that corroborated Mr. Bankston's statement." (Appellant's brief, p.10.) Blake relies on the fact that the letter specified the home's address and identified Blake's father as the homeowner. (Appellant's brief, p.10.) However, the rule requires that the hearsay statements be supported by "corroborating circumstances that *clearly* indicate its trustworthiness." I.R.E. 804(b)(3) (emphasis added). Bankston's letter did not in and of itself clearly indicate its own trustworthiness. The court expressly rejected the notion that the letter was self-corroborating and instead found that the letter contained claims that remained unverified either "by the defendant's testimony" or Blake's father. (Tr., p.58, L.7 – p.59, L.2.) Indeed, the court expressed serious doubt about the veracity of the statements in Bankston's letter because they were "made months after the declarant left the residence," which raised a serious question about how Bankston would know that other people in the house lacked knowledge of the drugs he allegedly left behind. (Tr., p.60, L.17 – p.61, L.10.) Ultimately, any weight the self-corroborating statements in the letter carried was far outweighed by the other circumstances that contradict and undermine the trustworthiness of the letter.

Because the court correctly concluded that the balance of factors weighs heavily in favor of excluding the letter from trial, and because its findings and conclusions were not speculative but were based on evidence before the court, Blake has failed to show that the district court failed to reach its decision by an exercise of reason. Accordingly, Blake has failed to show that the court erred when it denied his motion in limine.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction.

DATED this 9th day of June, 2020.

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of June, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Justin R. Porter
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JRP/dd