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### State v. Blake Appellant's Reply Brief Dckt. 47157

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 47157-2019
	)	
v.	)	ADA COUNTY
	)	NO. CR01-18-51644
CODY RYAN BLAKE,	)	
	)	
Defendant-Appellant.	)	
_____	)	

\_\_\_\_\_  
**REPLY 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 his judgment of conviction for trafficking in methamphetamine, challenging the district court's denial of his motion in limine. He argued in his Appellant's Brief that the district court abused its discretion in denying his motion in limine because the letter he sought to admit was a statement against interest made by an unavailable declarant, and met the standard for admissibility set forth in Idaho Rule of Evidence 804(b)(3). (Appellant's Br., pp.6-12.) He submits this Reply Brief to respond to the State's legal argument on this issue.

### Statement of Facts and Course of Proceedings

Mr. Blake included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-4.)

ISSUE

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

## ARGUMENT

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

In *State v. Meister*, 148 Idaho 236, 242 (2009), the Idaho Supreme Court adopted the test established by the Arizona Supreme Court in *State v. LaGrand*, 734 P.2d 563, 570 (Ariz. 1987), for determining the reliability and corroboration of a statement sought to be admitted under Idaho Rule of Evidence 804(b)(3). The Idaho Supreme Court noted that under this test, the trial judge's inquiry "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." *Meister*, 148 Idaho at 242 (quotation marks, citation, and emphasis omitted). The test thus "protect[s] the province of the jury as the fact-finder and prevents the judge from being able to bootstrap himself or herself in the jury box via evidentiary rules." *Id.* (quotation marks, citation, and brackets omitted).

The district court abused its discretion in applying the seven-factor *Meister* test because the evidence in the record at the time of the motion hearing would permit a reasonable person to believe the statement *could* be true. The State acknowledges, as it must, that Mr. Bankston was an unavailable witness (factor one), and that the letter he wrote was against his interest (factor two). (Respondent's Br., p.8.) The State contends the five remaining factors "weigh heavily against the trustworthiness of [the] letter." (Respondent's Br., p.8.) The State is incorrect as to three of these factors (factors five, six, and seven), which necessarily affects the overall weighing.

First, the State asserts a significant amount of time had passed between the incident and the statement, where Mr. Bankston mailed the letter approximately six weeks after the

methamphetamine was discovered. (Respondent's Br., p.9.) The State does not cite any authority for the proposition that six weeks is a significant amount of time in this context. (*See id.*)

Next, the State asserts "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 . . . ." (Respondent's Br., p.10.) There is absolutely no evidence in the record to support this inference. It would be equally reasonable to infer the letter was *not* the product of any such arrangement as no such arrangement was ever discovered.

Finally, the State asserts the psychological and physical surroundings could have affected Mr. Bankston's statement because he was housed with Mr. Blake at the jail during the time he wrote the letter. (Respondent's Br., p.10.) The fact that Mr. Blake and Mr. Bankston were housed together at Ada County Jail may have been what led Mr. Bankston to accept responsibility for his actions, which would weigh in favor of, rather than against, admissibility.

The *Meister* test is designed to let the jury, not the judge, be the ultimate finder of fact. *See Meister*, 148 Idaho at 243 (stating the seven-factor test "is desirable because it prevents the trial judge from substituting himself or herself as the ultimate fact-finder"). Indeed, in adopting this test, the Arizona Supreme Court explained there is a risk of a trial judge "impermissibly expand[ing] his role" in passing on questions of admissibility under Rule 804(b)(3). *See LaGrand*, 734 P.2d at 570. That is precisely what the seven-factor test is designed to prevent against. *See id.* The prosecutor presented many arguments in the district court as to why Mr. Bankston's letter should not be believed, and the State repeats many of these arguments on appeal. But these are arguments that should have been presented to a jury, in deciding the ultimate question of whether Mr. Blake committed the crime at issue. The district court abused



its discretion when it prevented Mr. Blake from presenting Mr. Bankston's letter to the jury, and its denial of Mr. Blake's motion in limine should be reversed.

CONCLUSION

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

DATED this 11<sup>th</sup> day of August, 2020.

/s/ Andrea W. Reynolds  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of August, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

AWR/eas