

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

STATE OF IDAHO, )  
 )  
 ) **No. 45635**  
 )  
 ) **Plaintiff-Respondent,** )  
 ) **Clearwater County Case No.**  
 ) **CR-2016-951**  
 )  
 ) **v.** )  
 )  
 ) **GARY C. PARTEE,** )  
 )  
 ) **Defendant-Appellant.** )  
 )  
 )

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CLEARWATER**

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**HONORABLE GREGORY FITZMAURICE  
District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Gary C. Partee appeals from the judgment of the district court entered upon the jury verdict finding him guilty of Delivery of a Controlled Substance, Methamphetamine, Possession of a Controlled Substance, Methamphetamine, and Possession of a Controlled Substance, Methamphetamine, with the Intent to Deliver.

On appeal Partee argues the district court erred when it denied his motion in limine and determined that Partee's material breach of the Confidential Informant/Testimony Agreement allowed the state to use Partee's statements regarding the delivery of methamphetamine against him at trial.

### Statement Of The Facts And Course Of The Proceedings

For years Partee had been issued public nuisance citations for the conditions on his property. (See R., pp. 30-34, 38-41.<sup>1</sup>) As noted by the Orofino police, "The stench of the residence and the property is foul at best and difficult to stand within any proximity." (R., p. 32.) Despite receiving citations, Partee had not taken any steps to remedy the problem or clean his property. (Id.)

On November 29, 2016, the Orofino Police Department executed a warrant to search Partee's residence. (See R., pp. 30-34, 38-41.) In addition to drugs and drug paraphernalia, Partee had three cats and a dog, plus a rattlesnake in a homemade atrium. (Id.)

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<sup>1</sup> These citations to the record and citations to the police reports and probable cause affidavits and are included to provide context for the factual background of this case.

The state charged Partee with possession of methamphetamine, possession of methamphetamine with the intent to deliver, possession of drug paraphernalia, resisting and obstructing an officer, litter on occupied property, and cruelty to animals in Clearwater County Case No. CR-2016-951 (the “2016 case”). (R., pp. 35-37, 45.)

Partee was released on his own recognizance from the Clearwater County jail. (Aug. pp. 6-7.<sup>2</sup>) As a condition of his release, Partee agreed to conduct controlled purchases for illegal drugs. (Id.) Partee, and his counsel, signed a Confidential Informant/Testimonial Agreement (the “Agreement”). (See Aug., pp. 18-31, 51-54.<sup>3</sup>)

Under the terms of the Agreement Partee agreed to talk to the police about drug trafficking, and other crimes, and also agreed to stay in contact with law enforcement, make at least 12 controlled buys, and testify in relevant cases. (See id.) In exchange, the state agreed to provide immunity to Partee. (Id.)

Partee participated in the interview with police. (See R., pp. 107-108; Aug., pp., 6-7; 7/5/17 Tr., p. 9, L. 4 – p. 12, L. 10.) Partee told the police that he sold methamphetamine approximately 50 times during the six-month period between May 29, 2016, and November 29, 2016. (7/5/17 Tr., p. 16, L. 16 – p. 17, L. 9.) However, after his interview, Partee did not fulfill the terms of the Agreement. (See R., pp. 107-108; Aug.,

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<sup>2</sup> Partee moved to augment the record on October 4, 2018. On October 10, 2018, the Idaho Supreme Court granted in part and denied in part the motion to augment. The augmentation is cited as “Aug.”

<sup>3</sup> The copies of signed versions of the Confidential Informant/Testimonial Agreement are not fully legible; therefore, the district court entered, as Exhibit 1, an unsigned but readable version of the same agreement. (7/5/17 Tr., p. 5, L. 9 – p. 8. L. 6; Ex. 1.) With the exception of handwritten notes (see Aug. p. 21), the signed and unsigned versions are the same (see 7/5/17 Tr., p. 5, L. 9 – p. 8. L. 6; Ex. 1; Aug., pp. 18-31, 51-54).

pp., 6-7; 7/5/17 Tr., p. 9, L. 4 – p. 12, L. 10.) He did not stay in contact with law enforcement and did not make any controlled buys. (See id.)

The state brought additional charges of possession of methamphetamine and delivery of methamphetamine in Clearwater County Case No. CR-2017-95 (the “2017 case”). (See Aug., pp. 1-8.) The state moved to consolidate the 2017 case and the 2016 case because the 2016 case “consists of previously charged offenses arising from the same circumstances or events leading to the charges in [the 2017 case].” (R., pp. 103-104.)

Partee filed a “Motion to Dismiss Delivery Charge or, in the Alternative, Suppress Statements Made by Defendant” and a brief and affidavit in support. (Aug., pp. 10-32.) Partee argued that the state was violating the Agreement “by intending to utilize statements made by Mr. Partee against him to support the charge of Delivery of a Controlled Substance.” (Aug., p. 12.) Partee claimed that the Agreement granted him immunity from statements he made during his interview with police, regardless of whether he completed the other requirements under the Agreement. (See Aug., pp. 12-15.) Partee explained the scope of his motion was to exclude his statements regarding his selling of methamphetamine that formed the basis of the delivery of methamphetamine charge. (See Aug., pp. 12-15; 7/5/17 Tr., p. 15, L. 11 – p. 17, L. 9.)

After hearing argument, the district court denied Partee’s motion to suppress statements he made during his interview. (Aug., pp. 45-47.) The court ruled that the Agreement was unambiguous and Partee’s failure to abide by its terms removed the grant of immunity:

Defendant Gary Partee, hereinafter referred to as Partee, has filed a motion to dismiss the Delivery of a Controlled Substance charge. He alleges pursuant to an agreement with the State, he was granted immunity from use of the statements in any prosecution. The State now intends to use the statements made by Partee to support the delivery charge.

The parties stipulated that the testimony of Eric Dodge at the preliminary hearing shows that Partee violated the agreement he made with the State. Partee states that although he did not fully perform the requirements under the agreement and agrees he is not entitled to the plea agreement, he asserts that the agreement granted immunity from the use of the statements as long as he was fully and completely honest. He states that he has been completely honest in his conversations with law enforcement.

Confidential informant agreements are generally governed by contract law principles. *State v. Chacon*, 146 Idaho 520, 522, 198 P.3d 479, 751 (Ct. App. 2008). When the language of a contract is clear and unambiguous, the legal effect of the document is a question of law. *Bybee v. Iassac*, 145 Idaho 251, 256 178 P.3d 616, 621 (2008). When interpreting a contract, the Court looks to the intent of the parties and the document as a whole. *Id.*

The Court finds that the Confidential Informant Agreement between the State and Partee is unambiguous. In looking at the document as a whole, the agreement unambiguously states in paragraph 2 A. that Partee must perform and “[f]ailure to do so for whatever reason shall be deemed a material breach of this agreement and relieve the State of any and all promises and obligations identified herein, **including any and all grants of immunity**. *Emphasis added*. Partee admitted that he did not fully perform the requirements under the Agreement in paragraph 2 and 3.

Paragraph 2 B (G) iterates that Partee must fully perform to receive immunity:

A breach by The Suspect of the terms and conditions of the agreement shall relieve the State of any of its obligations herein, allowing each jurisdiction entering into this agreement: to pursue any and all charges deemed appropriate; to be relieved of the promises contained herein; and to utilize any information provided by the Suspect against him regardless of a promise of immunity.

Partee’s Motion to Dismiss Delivery Charge, or, in the Alternative, Suppress Statements Made by Defendant is DENIED.

(Aug., pp. 45-46.)

The district court entered an order consolidating the cases. (R., pp. 110-112.) The state filed a consolidated Information and then an Amended Consolidated Information. (R., pp. 113-116, 149-150.) The case proceeded to jury trial. (R., pp. 196-223.) The jury found Partee guilty of Delivery of a Controlled Substance, Methamphetamine, Possession of a Controlled Substance, Methamphetamine, and of Possession of a Controlled Substance, Methamphetamine, with the Intent to Deliver. (R., pp. 252-253.) The district court entered judgment and sentenced Partee to five years with three years fixed for each count, with the sentences to run concurrently. (R., pp. 296-298.) The district court suspended the sentence and retained jurisdiction. (Id.) Partee timely appealed. (R., pp. 301-304.)



ISSUE

Partee states the issue on appeal as:

Did the district court err by denying Mr. Partee's motion in limine because the agreement conditioned its grant of immunity for Mr. Partee's statements *solely* on his being fully and completely honest during the interview?

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Partee failed to show the district court erred when it interpreted the plain language of the Agreement and denied his motion in limine?

## ARGUMENT

### The District Court Did Not Err When It Denied Partee's Motion In Limine To Exclude The Statements He Made Pursuant To The Agreement

#### A. Introduction

The district court found the Agreement was not ambiguous and held that, under its plain terms Partee's material breach of the contract removed any immunity. (See Aug. pp. 45-47.) On appeal, Partee argues the district court erred and claims that Section 1 conflicts with Section 2. (See Appellant's brief, pp. 7-12.) Partee's argument is not supported by the language of the Agreement.

Under the plain language of the Agreement, Partee would get immunity for statements made during his interview if he was honest; however, the Agreement also provided that, if Partee failed to complete any part of the Agreement, such failure would be a "material breach" and the State would be relieved "of any and all promises and obligations identified herein, including any and all grants of immunity." (Aug., p. 52.)

The agreement further provided: "A breach by [Partee] of the terms and obligations of this agreement shall relieve the State of any of its obligations herein, allowing each jurisdiction entering into this agreement: ... to utilize any information provided by [Partee] against him regardless of a promise of immunity." (Aug., p. 53.) The plain language of the Agreement contemplated Partee would receive immunity for his honest statements, but his failure to complete the terms of the Agreement would remove that immunity. The district court did not err.

B. Standard Of Review<sup>4</sup>

The decision to deny Partee’s motion in limine was based upon the district court’s interpretation of the Agreement. (See Aug., pp. 45-47.) Where the trial court’s decision depends on an interpretation of an agreement between the defendant and the state, the standard of review on appeal is the same as in civil contract cases. State v. Barnett, 133 Idaho 231, 234, 985 P.2d 111, 114 (1999).

“The interpretation of a contract’s meaning and legal effect are questions of law to be decided by the Court if the terms of the contract are clear and unambiguous.” Id. (citing City of Idaho Falls v. Home Indemnity Co., 126 Idaho 604, 888 P.2d 383 (1995)). “The meaning of an unambiguous contract and the intent of the parties must be determined from the plain meaning of the contract’s own words.” Id. (citation omitted). “Where a contract is determined to be ambiguous, interpretation of it is a question of fact that focuses on the intent of the parties.” Id. (citing Ada County Assessor v. Taylor, 124 Idaho 550, 861 P.2d 1215 (1993)). “Whether the facts establish a violation of the contract is a question of law reviewed *de novo*.” Id. (citation omitted).

C. The District Court Applied The Plain Language Of The Agreement And Did Not Err When It Denied Partee’s Motion In Limine

The district court found that the Agreement was “unambiguous.” (Aug., pp. 45-46.) When looking at the Agreement as a whole, it “unambiguously” states that if Partee failed to perform such a failure would be “deemed a material breach of this agreement

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<sup>4</sup> On appeal, Partee correctly notes that, while he characterized his motion before the district court as a motion to suppress, it is more properly characterized as a motion in limine because the claim involves the enforcement of the Agreement, and not a violation of Partee’s constitutional rights. (See Appellant’s brief, p. 3 n.3.)

and relieve the State of any and all promises and obligations identified herein, **including any and all grants of immunity.**” (Id. (emphasis added by district court).) Since Partee admitted he did not fully perform the requirements under the Agreement, the district court found that Partee was not entitled to immunity for the admissions he made during his interview and denied his motion in limine. (See id.)

On appeal Partee argues the Agreement contained conflicting provisions and, since there were conflicting provisions, those provision should be construed against the drafter (the State) and, thus, Partee should be given the benefit of immunity for the statements made during his interview. (See Appellant’s brief, pp. 7-12.) The premise of Partee’s argument fails. The Agreement is unambiguous.

Under the plain terms of the Agreement, Partee was entitled to immunity for statements he made during his interview, provided he was honest; however, that continuing immunity was contingent upon his successful completion of the other explicit requirements of the Agreement. (See Aug., pp. 18-31, 51-54.) Since it is undisputed he failed to complete those requirements, he lost any immunity he previously had. The district court did not err when it determined the Agreement was not ambiguous.

“Confidential informant agreements, like plea agreements, are generally governed by contract law principles, and both the prosecutor and the defendant are bound by their agreement.” State v. Chacon, 146 Idaho 520, 522-523, 198 P.3d 749, 751-752 (Ct. App. 2008) (citing Dunlap v. State, 141 Idaho 50, 63, 106 P.3d 376, 389 (2004); Berg v. State, 131 Idaho 517, 519, 960 P.2d 738, 740 (1998)). “A court need not blindly follow contract law principles in reviewing confidential informant agreements, however, because [c]ases may arise in which the law of contracts will not provide a sufficient analogy and

mode of analysis.” Id. (citing Dunlap, 141 Idaho at 63, 106 P.3d at 389; United States v. Carrillo, 709 F.2d 35, 36-37 n. 1 (9th Cir.1983)) “The meaning of an unambiguous contract and the intent of the parties must be determined from the plain meaning of the contract’s own words.” Barnett, 133 Idaho at 234, 985 P.2d at 114 (citation omitted). This Agreement is unambiguous.

The Agreement first identifies the parties then includes recitals, which outline that Partee is a suspect in several offenses and that the purpose of the Agreement is to provide “assistance, information and testimonial assistance by [Partee] to the State of Idaho.” (Aug., p. 51.) The next section is titled “AGREEMENT” and includes three sections of the Agreement. (See Aug., pp. 51-53.) The first two sections outline Partee’s obligations, and the third provides set forth state’s obligations. (See Aug., pp. 21, 31, 51-54.) The first section provides that Partee is required to participate in an interview and that he be fully and completely honest. (Aug., pp. 51-52.) If Partee is fully honest, Partee will “be provided immunity for everything he/she discloses in the context of such interview or interviews[.]” (Id.)

### III. AGREEMENT

1. Suspect agrees to meet and provide a full debriefing upon request, including follow up interviews if necessary, with any appropriate law enforcement agency or officer of the State of Idaho, or the United States of America with respect to knowledge of controlled substances trafficking, use, dealing, transportation, or any related matter, and with respect to stolen property/burglary offenses of which he has knowledge [sic].

A. Suspect shall be provided immunity for everything he/she discloses in the context of such interview or interviews, other than disclosure of any crime of violence. The State reserves the right to utilize information against the Suspect with respect to a crime of violence as it is the State’s policy not to provide immunity for the same.

B. **This grant of immunity is contingent solely upon the Suspect being fully and completely honest** This requirement is defined as requiring the Suspect to provide information which is true and accurate to the best of his knowledge and belief, and also to not withhold or fail to disclose information which he is asked about. **Specifically, this grant of immunity shall fail should the Suspect provide false information whether or not that false information would be helpful or harmful to any investigation in which the State is involve, or should The Suspect withhold material information being sought by the State.** This grant of immunity shall not apply to any information related to a crime of violence, and the Suspect shall not be required to discuss the same should the same exist.

(Aug., pp. 51-52 (emphasis original).)

Section 2 provides that Partee is required, among other things, to remain in regular contact with law enforcement and to assist with at least 12 controlled buys of methamphetamine. (See Aug., pp. 52-53.) Section 2(A) provides that if Partee fails any of these obligations it “shall be deemed a material breach of this agreement and relieve the State of any and all promises and obligations identified herein, including any and all grants of immunity.” (See id.)

2. [Partee] further agrees as follows:

A. To stay within regular contact with law enforcement, and to fully cooperate with any request made to him to engage in controlled purchase of illegal substances of any kind of behalf of the State for a period of 6 months from the date of this agreement. It is specifically understood that such activity may take place inside the State of Idaho and outside of the State of Idaho, and may be subject to either State or Federal jurisdiction. [Partee] further agrees to assist with a minimum of 12 purchases of illegal substances not limited to, but including Methamphetamine and any other substance identified by law enforcement (Identify substance) from an identified target, or each of To be identified by law enforcement identified targets of controlled substance investigations. The specification of said targeted individual or individuals shall be determined by law enforcement following a debriefing interview with [Partee]. [Partee] ***must perform***, i.e., must complete each and every promised purchase of controlled substances. Failure to do so for whatever reason shall be deemed a material breach of this agreement and relieve the

State of any and all promises and obligations identified herein, including any and all grants of immunity. ***This agreement may not be satisfied by good faith efforts. Performance is mandatory!***

(Aug. p. 52 (emphases and underlying original).)

Partee conceded that he failed his obligations under subsection 2. (Aug., p. 14 (“The Defense concedes that Mr. Partee did not fully perform the requirements under the Agreement set forth in Paragraphs 2 and 3.”); see also Aug., pp. 45-46.) Under the plain language of this section, this failure is a “material breach” and the State is relieved “of any and all promises and obligations identified here, including any and all grants of immunity.” (Aug., p. 52.) As a result of Partee’s material breach, the State was no longer bound to give Partee immunity, even if Partee had been honest during his interview.

Partee also agreed that any breach of this Agreement would allow the state to utilize the information he provided against him, “regardless of a promise of immunity.”

(Aug., p. 53.)

G. A breach by [Partee] of the terms and obligations of this agreement shall relieve the State of any of its obligations herein, allowing each jurisdiction entering into this agreement: to pursue any and all charges deemed appropriate; to be relieved of the promises contained herein; and to utilize any information provided by [Partee] against him regardless of a promise of immunity.

(Aug., p. 53.)

Partee’s argument that the grant of immunity in Section 1 conflicts with Section 2’s removing immunity is refuted by the language of the Agreement. There is no reason to read Section 1 and Section 2 as separate agreements; they are both explicitly part of the same agreement. Both Section 2(A) and Section 2(G) recognize that Partee may have been given immunity under Section 1, but that this immunity could be revoked if he

failed to fulfill his obligations under Section 2. Section 2(A): “Failure to do so for whatever reason shall be deemed a material breach of this agreement and relieve the State of any and all promises and obligations identified herein, including any and all grants of immunity.” Section 2 (G): “A breach by [Partee] of the terms and obligations of this agreement shall relieve the State of any of its obligations herein, allowing each jurisdiction entering into this agreement: ... to utilize any information provided by [Partee] against him regardless of a promise of immunity.” (Aug., pp. 52-53.) There is no conflict.

The district court properly concluded that, under the plain language of the Agreement, Partee’s material breach relieved the state of its promises of immunity. The district court properly denied Partee’s motion in limine.

#### CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 20th day of December, 2018.

/s/ Ted S. Tollefson  
TED S. TOLLEFSON  
Deputy Attorney General



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of December, 2018, 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/ Ted S. Tollefson  
TED S. TOLLEFSON  
Deputy Attorney General

TST/dd