



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1094-15

CHRISTOPHER EARL DARCY, Appellant

v.

THE STATE OF TEXAS

**ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SEVENTH COURT OF APPEALS
MOORE COUNTY**

JOHNSON, J., filed a concurring opinion.

CONCURRING OPINION

I concur in the judgment of the Court.

Appellant was charged with burglary of a habitation. The bogus note was part of an unrelated investigation into security issues in the county jail. It appears from the record that the state's agent asked Morris to send a note merely to see if the note would help track down the smuggling network and that she was asked solely because she knew an inmate, not because she specifically knew appellant. The note contained no information about the offense charged against appellant. It did not ask him to reveal information about the offense, nor did it purport to expose his involvement in an

extraneous offense. It did not purport to offer a benefit if he took a proposed action. If it had been mailed to him, it would likely have made it past the censors unscathed, nor would anyone consider such a communication a breach of appellant's right to counsel.

It had little if any impeachment value, especially because there was no testimony that he responded to the note, that he received it, or even that he knew of the existence of the suspected smuggling network,¹ and the investigator verified Morris's testimony about the note. In sum, the note was neither relevant nor material and probably should not have been admitted into evidence. But it was.

Still, being in evidence did not change the note's nature: no content about the charged offense or any extraneous offenses, no request for information. The only possible negative inference that could be drawn would occur if appellant had sent a note back through the illicit network but, again, there is no evidence that appellant knew of the smuggling network.

In these circumstances, even assuming that admitting the note was error, I do not think that appellant can show harm.

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Publish

¹ Testimony of the investigator who asked Morris to write the note: "No one has searched for the letter. In fact, it has not turned up until today and I'm rather curious myself about how it got here."