

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

FELIZ RICARDO MEJIA III,

Appellant.

No. 39778-1-II

UNPUBLISHED OPINION

Armstrong, J. — Feliz Ricardo Mejia III appeals his convictions of first degree assault while armed with a deadly weapon, first degree unlawful possession of a firearm, making false or misleading statements to a law enforcement officer, and violation of a domestic violence protection order. He argues that he was denied his rights to a public trial and effective representation when the trial judge questioned a potential juror in chambers without engaging in a *Bone-Club*¹ analysis and without objection from his trial counsel. He also argues that the trial court erred in admitting a letter he wrote to his wife, offered by the State to show intent. The State concedes the first error. Accordingly, we accept the State's concession, reverse Mejia's convictions, and remand for a new trial.

¹ *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995).

FACTS

On March 17, 2009, Trina,² Mejia's wife, told him that she was leaving him and that she wanted a divorce. Mejia became enraged, grabbed her by the throat, and pointed a loaded handgun at her left temple. Trina tried to calm Mejia by convincing him that everything would be okay. He eventually let her go and left the premises.

The next day, Trina obtained a temporary protection order, which Deputy Ryan Hoover served on Mejia at their shared residence. Mejia told Deputy Hoover that he did not have any handguns. While the deputy waited for Trina to arrive, Mejia left the premises. When Trina arrived, she gave Deputy Hoover permission to search the residence. He found a loaded and operable handgun under the bed.

The State charged Mejia with first degree assault while armed with a deadly weapon, first degree unlawful possession of a firearm, making false or misleading statements to a law enforcement officer, and violation of a domestic violence protection order. The case proceeded to trial.

During a recess from voir dire, the judge asked juror 36 to appear in chambers for questioning with all parties present. The trial judge asked the potential juror if he had seen the defendant in handcuffs. Although the juror said that he had not, by questioning the juror about the incident, the judge effectively told the juror that the defendant was in custody. The judge informed the juror that he would have to be dismissed, explaining that knowledge of defendant's custodial status has the potential to taint jury deliberations. Neither counsel objected to the handling of the dismissal.

² We refer to Trina Mejia by her first name for clarity.

At trial, the State called Trina to testify to the alleged attack. To prove Mejia's intent, the State proffered a letter he wrote to Trina approximately 22 months before the attack at issue and after his conviction on a prior assault.³ The letter was part of a court-ordered "moral recognition [sic] training"⁴ designed to help defendants learn to identify and control negative emotions. Report of Proceedings (RP) at 25-26. Although the letter was never sent, Trina found the original in the garage. In the letter, Mejia stated that he had a powerful "hatred" for Trina that "can kill just by me standing too close to you"; that "no man on [E]arth will be able to stop me from hurting you or even killing you"; and that "I hope you die." RP at 157-58. Over objection, the trial judge admitted the letter to show specific intent, reasoning that the letter had a "high probative value" by offering a window into the mind of the alleged perpetrator. RP at 40-42.

The jury convicted Mejia on all counts. The court held a sentencing hearing after which the jury found that Mejia's assault conviction was an aggravated domestic violence offense. The court imposed an exceptional sentence of 360 months' confinement.

ANALYSIS

I. Right to a Public Trial

Mejia argues that the trial court denied him his right to a public trial when it questioned a potential juror in chambers without engaging in a *Bone-Club* analysis on the record. Mejia asks

³ The record contains information regarding three prior assaults on Trina committed by Mejia. The facts pertaining to these assaults are not related to any legal issue in this appeal.

⁴ It is likely that the cognitive behavioral therapy referred to is in fact Moral Reconciliation Therapy®.

us to reverse his convictions and remand for a new trial. The State concedes the error and agrees that the appropriate remedy is to reverse and remand for a new trial.

There is already a split on this court as to the appropriate remedy for a public trial right violation.⁵ Our Supreme Court has accepted review of several cases that could potentially resolve this issue.⁶ We are unwilling to contribute further to the unsettled state of the law. Accordingly, we accept the State's concession and remand for a new trial.

II. Evidence of Intent

In addition, Mejia assigns error to the trial court's admission of his letter to Trina, offered to show his intent to inflict great bodily harm. He argues the letter is more prejudicial than probative. According to Mejia, the undated letter does not show that he intended to inflict great bodily harm on Trina on the day in question. Because this issue is likely to resurface on remand, we address it and conclude that the trial court did not abuse its discretion in admitting the letter.

Only relevant evidence is admissible. ER 402. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence more or less probable than it would be without the evidence. ER 401. The threshold to admit relevant evidence is very low; even minimally relevant evidence is admissible. *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002). Relevant evidence must be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice. ER 403; *Kappelman v. Lutz*, 167

⁵ Compare *State v. Paumier*, 155 Wn. App. 673, 230 P.3d 212 (2010) and *State v. Leyerle*, 158 Wn. App. 474, 242 P.3d 921 (2010) with *State v. Bowen*, 157 Wn. App. 821, 239 P.3d 1114 (2010).

⁶ See e.g., *State v. Paumier*, 169 Wn.2d 1017, 236 P.3d 206 (2010) (order granting review); *State v. Wise*, 170 Wn.2d 1009, 236 P.3d 207 (2010) (order granting review).

Wn.2d 1, 8 n.10, 217 P.3d 286 (2009). We review the admission of evidence for abuse of discretion. *State v. Magers*, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). A court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

A person is guilty of first degree assault if he or she, with intent to inflict great bodily harm, assaults another with a firearm. RCW 9A.36.011(1)(a). Thus, to obtain the letter's admission, the State had to show that it was probative of Mejia's intent to inflict great bodily harm on Trina. Specific intent cannot be presumed, but it can be inferred as a logical probability from all the facts and circumstances, including the nature of the prior relationship and any previous threats. *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994) (citation omitted); *State v. Pierre*, 108 Wn. App. 378, 386, 31 P.3d 1207 (2001).

During the offer of proof, Mejia confirmed that he wrote the letter and that it reflected his feelings of hatred toward his wife. As evidence of the "nature of their prior relationship," the letter demonstrates that Mejia had violent feelings toward Trina. *See Wilson*, 125 Wn.2d at 217. Coupled with Trina's testimony of the altercation, it is relevant to the jury's determination of intent. The letter's timing ultimately goes to its weight, not its admissibility. And although the letter may have cast Mejia in an unfavorable light, the jury heard Trina testify that during the altercation, Mejia was kicking and breaking furniture, that he choked and scratched her, and that he cocked a loaded gun and put it against her head. This already negative testimony mitigates the danger of unfair prejudice stemming from the letter. The trial court did not abuse its discretion in admitting the letter.

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We accept the State's concession, reverse Mejia's convictions, and remand for a new trial.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

I concur:

Penoyar, C.J.

Quinn-Brintnall J. (concurring in the result) — I agree with the majority’s decision to accept the State’s concession. I write separately to note that, from my review of the record, it appears that the trial judge discussed his intention to inquire into the possible tainting of the juror. And, according to Feliz Mejia’s brief, “Neither attorney posed any questions and both agreed ‘in handling it this way.’” Br. of Appellant at 7 (quoting Report of Proceedings (RP) (Aug. 24, 2009) at 4). The trial judge questioned one juror about whether he saw Mejia being put into handcuffs before leaving the courtroom and then stated, “Looks like maybe [the juror] didn’t see whatever we thought he saw, but now that I’ve told him about it it’s the same effect as if he had seen it.” RP (Aug. 24, 2009) at 6. The State responded, “Correct,” and Mejia’s attorney said there was “[n]o issue.” RP (Aug. 24, 2009) at 6. The trial judge then dismissed the questioned juror. A short while later defense counsel acknowledged that he had told another juror seeking admission to the courtroom that the courtroom was locked. Thus, but for the State’s concession, I would hold any error in the questioning of a potentially tainted juror was invited and is not preserved for our review.

In addition, as to the admissibility of Mejia’s letter, Trina Mejia testified that she had found the letter in Mejia’s things after his arrest when she was cleaning the garage. She also testified that she had searched through Mejia’s things in the garage at least two times before, the most recent being within the week prior to the assault, and never saw the letter until after Mejia’s arrest. Trina Mejia’s testimony gives rise to the inference that the letter was written after she and Mejia returned to Lacey in August of 2008, and within weeks, not years, of the March 2009

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assault for which Mejia was on trial. Accordingly, the letter, and Trina Mejia's testimony about it, was relevant evidence that the trial court properly admitted.

QUINN-BRINTNALL, J.