IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DAVID JOSEPH HARRIS, Appellant.	No. 41712-0-II UNPUBLISHED OPINION

Hunt, J. — David Joseph Harris appeals his jury trial conviction for second degree assault with a deadly weapon. He argues that the trial court erred when it admitted evidence contained in his outgoing letters from prison, which were seized without a warrant in violation of article I, section 7 of the Washington constitution and the Fourth Amendment to the United States Constitution. Holding that error, if any, was harmless, we affirm.

FACTS

I. Stabbing

David Joseph Harris and his friend, Rebecca Menges, were drinking at R Bar in Port Angeles. Harris confronted another bar patron, Matthew Roberts, whom Harris accused of cutting in front of him at the bar. Their confrontation escalated; when Harris shoved Roberts, others, including the "bouncer," intervened. Report of Proceedings (RP) (Dec. 7, 2010) at 14.

Later that evening, Harris shoved Roberts again and threatened him; again, "bouncers" broke up the altercation and escorted Harris out of the bar. RP (Dec. 7, 2010) at 17. Harris continued to hang around the bar, attempting to come back in multiple times. When one of the "bouncers," Joshua Johnston, told him that he could not come back into the bar, Harris responded angrily and threatened, "[W]e're gonna come back and shoot this place up." RP (Dec. 6, 2010) at 41.

Ernesto Sanchez Andalob also was at R Bar that evening and early the next morning. He drank six beers that night and was "[p]erhaps a bit tipsy, but not drunk." RP (Dec. 7, 2010) at 84. Eventually, he went outside for some fresh air and saw an acquaintance who was about to fight Harris. Seeing Harris apparently accompanied by two other men, Sanchez Andalob told his acquaintance "let's go" in Spanish. RP (Dec. 7, 2010) at 78. Harris then "came at" Sanchez Andalob, who "wanted to respond but . . . didn't have time" to hit Harris. RP (Dec. 7, 2010) at 78, 79.

Meanwhile, outside the bar, Johnston saw what appeared to be Harris "pullin' back from punchin'" someone "in the gut" and then saw Harris run away. RP (Dec. 6, 2010) at 42, 43. When the victim pulled back his hands, blood "just started coming out," and Johnston immediately recognized that Harris had stabbed the victim. RP (Dec. 6, 2010) at 42. Cameron Joutsen was leaving R Bar when he, too, saw "a round house swinging motion to a man's ribs . . . and then the guy that did the swinging took off, started running." RP (Dec. 7, 2010) at 173. Jousten ran over to help the victim and applied pressure to the wound. The victim, Sanchez Andalob, suffered two stab wounds, one in the buttocks and the other in the chest, which wound lacerated a lung.

Around two o'clock that same early morning, Alley Snyder heard a male pounding on her door, yelling that he thought he had killed someone and stabbed him. Blood was on her door, which investigators later determined to be Harris's. An hour or two later, Menges contacted Harris, who told her that he was gone, that he "wasn't coming back," and that he had been "jumped." RP (Dec. 6, 2010) at 78. Menges later told "someone" that Harris had told her the "guy who got stabbed didn't have anything to do with it but just got in the middle." RP (Dec. 6, 2010) at 80.

That same morning, Harris sent a text message to his ex-wife, Tricia Deunas-Harris, saying, "I'm sorry and I love you. Tell the kids I love them and I'm sorry." RP (Dec. 7, 2010) at 30. Deunas-Harris called Harris, who told her that (1) "he had hurt somebody and that he had probably put them in the hospital"; and (2) he was "going to have to go away for a long time and possibly forever." RP (Dec. 7, 2010) at 31. In later conversations, Harris told Deunas-Harris that there had been three to five people attacking him before the incident and, "I've got a game plan. We're going to claim self defense." RP (Dec. 7, 2010) at 51.

That same early morning, Officer John Nutter secured a bloody knife that he had found at the stabbing scene; the blood contained Harris's and Sanchez Andalob's DNA (deoxyribonucleic acid).[1] Later that same day, two witnesses observed that Harris had a cut lip, a bruised face, and a noticeable limp.

A few days later, Detective Kevin Spencer also observed that Harris had a cut lip. Harris

[1] Forensic scientist, Lisa Collins, later determined that Sanchez Andalob's DNA was on the blade of the knife and that a mixture of DNA from Sanchez Andalob and Harris was on the handle of the knife. Collins did not "see any types [of DNA] present in this mixture that were foreign to the combination of the two of them[, Sanchez Andalob and Harris]." RP (Dec. 7, 2010) at 121.

also told Spencer about "some knots on his [Harris's] head." RP (Dec. 6, 2010) at 133. Spencer did not observe any knots or lumps, but he did not try to feel Harris's head to see if any were present. Harris surrendered himself to police.

II. Procedure

The State charged Harris with first-degree assault with a deadly weapon. He remained in the Clallam County Jail pending his jury trial.

While Harris was in jail, Corrections Sergeant Don Wenzl intercepted and read two letters that Harris was sending out, copies of which he provided to law enforcement. Relevant parts of these letters read:

> Hey How's it going I need you or for you to get someone elese to call Imigration to have them pickup + deport Ernesto Sanches Andalob . . . he is an Illegal allien. Also call the FBI and Inform them that Victor Olvera Gallegos [Sanchez Andalob's acquaintance] is using a stolen social security card he works at Sergios Hacienda . . . and he is also Illegal so inform INS of Both of them + the FBI. This needs to be done ASAP like yesterday. Please and thank you
>
> So ya Bla Bla Bla I apreciate all of your Help with this situation and hope to see you real soon this is all bullsh[*]t and I should not even be here becouse I didn't do anything Illegal and these guys are criminals and shouldn't even be in the country period I hope you get this soon becouse this matter needs to be atttended to Right away thank you so verry much c ya later.

Ex. 57.

> They Postponed my trial till Dec. but I guess you know that since your being called as a witness against me. I don't know why since I never told you any details of my situation. I hope you realize I cant Pay child support from Prison and I cant be there for my kids. I think you hurt me enough in the divorce and dont understand why you would want to hurt me further. Its just not nessecary to say anything negative about me. You wernt there and you dont know anything about this.

Ex. 58.

During trial, Harris moved to exclude these two letters, arguing that Wenzl needed a warrant because his intent in searching these letters was to find evidence for the case, not for jail security reasons. The trial court ruled that no warrant was required and that the letters were relevant and admissible as evidence of a guilty conscience under *State v. Moran*, 119 Wn. App. 197, 81 P.3d 122 (2003).

At trial, witnesses testified as already set forth. Harris requested and the court gave a self-defense jury instruction. The jury convicted him of the lesser-included offense of second-degree assault and returned a special verdict finding that he had committed the crime while armed with a deadly weapon. Harris appeals.

ANALYSIS

Harris argues that (1) admission of letters sent by Harris from the jail violated his right to privacy protected by article I, section 7 of the Washington constitution and the Fourth Amendment of the United States Constitution because the search of his letters was not motivated by security concerns; and (2) this error prejudiced him by undermining his self-defense claim because the jury could have construed his letters as an attempt to influence or to suppress testimony. Holding that error, if any, was harmless, we do not address whether the State violated article I, section 7 of the Washington constitution or the Fourth Amendment of the United States Constitution when Wenzl opened and read Harris's mail.[2]

[2] *See Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 527 U.S. 173, 184, 119 S. Ct. 1923, 144 L. Ed. 2d 161 (1999) ("we do not ordinarily reach out to make novel or unnecessarily broad pronouncements on constitutional issues when a case can be fully resolved on a narrower ground"); *State v. Brown*, 142 Wn.2d 57, 63 n.4, 11 P.3d 818 (2000) (our state Supreme Court declined to address constitutional issue after resolving case on nonconstitutional grounds).

The State has the burden of proving that an error of constitutional magnitude was harmless. *State v. Easter*, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996). Constitutional error is harmless if we are convinced beyond a reasonable doubt that the result of the trial would have been the same absent the error based on overwhelming untainted evidence. *Easter*, 130 Wn.2d at 242. Here, there was overwhelming evidence tying Harris to the stabbing and establishing that he did not act in self-defense.

The State presented testimony from multiple eye witnesses who saw Harris stab Sanchez Andalob. Sanchez Andalob's DNA was found on the blade of the bloody knife at the scene, and a combination of Sanchez Andalob's and Harris's DNA was found on the knife's handle. Multiple eye witnesses testified about Harris's aggressive behavior and threats the night of the murder. Sanchez Andalob testified that two other men were apparently accompanying Harris when Harris confronted Sanchez Andalob's acquaintance.

None of the State's eye witnesses testified that Harris acted in self-defense. Nor did Harris present evidence that he had acted in self-defense. And Menges testified that, on the Friday before trial, she told "someone" that Harris had told her "the guy who got stabbed didn't have anything to do with it but just got in the middle." RP (Dec. 6, 2010) at 80. In light of the overwhelming untainted evidence tying Harris to the stabbing and disproving that he acted in self-defense, error in admitting his letters, if any, was harmless because the jury would have

reached the same result absent such error. *Easter*, 130 Wn.2d at 242.

We affirm.

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 in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, P.J.

Penoyar, J.