

67912-1

67912-1

NO. 67912-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

THOMAS JEFFERSON HOPKINS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BRUCE HELLER

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

AMY MONTGOMERY
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

W

TABLE OF CONTENTS

	Page
A. ISSUES PRESENTED	1
B. STATEMENT OF THE CASE.....	1
1. PROCEDURAL FACTS	1
2. SUBSTANTIVE FACTS	1
C. ARGUMENT	6
1. THE COURT DID NOT ABUSE ITS DISCRETION IN PROPERLY ADMITTING TESTIMONY ABOUT THE CONTENTS OF THE LETTER.....	6
a. Sufficient foundation was laid to permit the written statements of Hopkins.....	6
b. The probative value of the evidence outweighed any prejudicial impact.....	7
2. IF THERE WAS ERROR IN THE ADMISSION OF THE TESTIMONY, IT WAS HARMLESS.....	8
D. CONCLUSION.....	10

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Danielson, 37 Wn. App. 469, 681 P.2d 260 (1984)6

State v. Finch, 137 Wn. 2d 792, 975 P.2d 967 (1999)6

State v. Gogolin, 45 Wash. App. 640, 727 P.2d 683 (1986)8

State v. Sanders, 66 Wash. App. 878, 833 P.2d 452 (1992)7

State v. Simmons, 52 Wash 132, 100 P. 269 (1909)6

State v. Williamson, 136 Wash. App. 486, 150 P.3d 111 (2007)6

Rules and Regulations

Washington State:

ER 404(b)8

ER 801(d)(2)7

ER 9016,7

A. ISSUES PRESENTED

A witness is allowed to testify about her familiarity with another's handwriting. Did the Court exercise proper discretion in allowing a witness who has dated the appellant for twenty years and is confident a letter was written by him to testify about the contents of that letter?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

By information, the State charged the appellant, Thomas Jefferson Hopkins, with one count of Attempted Robbery in the First Degree. CP 1-7. The jury convicted Hopkins as charged. CP 130. With an offender score of nine, Hopkins faced a standard range sentence of 96.75 – 120 months. CP 219-228. The Court imposed an exceptional sentence downward and sentenced Hopkins to 72 months. CP 219-228. The appellant timely appeals.

2. SUBSTANTIVE FACTS

On October 26, 2009, Marites Beck worked as a teller at the Bank of America, located at 700 5th Ave. 8/15/11RP 54. Hopkins approached Ms. Beck and demanded money, stating, "This is a robbery." 8/15/11RP 56. Ms. Beck did not immediately comply, and Hopkins stated, "I have a gun here." He reached inside his

jacket, which frightened Ms. Beck. 8/15/11RP 64. Hopkins then showed a note to Flor Delgado, the bank manager. 8/15/11RP 112. The note read, "\$4000." In addition, Hopkins repeatedly told Ms. Delgado, "I need \$4000." 8/15/11RP 115. Ms. Delgado knew that she was being robbed. 8/15/11RP 112. She flagged a uniformed officer who was coincidentally a customer in the bank. 8/15/11 RP 112. Hopkins ran out of the bank, followed by the officer. 8/15/11 RP 119.

Feleke Yesheberu was working as a taxicab driver for Orange Cab. 8/15/11RP 10. He received a call for a taxi that took him just outside the B of A, at 700 5th Ave. 8/1511RP 11. A woman who was different than the person who ordered the taxi approached and asked if Mr. Yesheberu was free. 8/15/11RP 11-12. She appeared ill, so Mr. Yesheberu agreed to drive her to Tacoma. 8/15/11RP 13-14. That woman, Mary Brown¹, said that they needed to wait for a male, who had gone into the bank to get money. 8/15/11RP 18. Ms. Brown left the door open and gestured to Hopkins, who ran into the car. 8/15/11RP 18. As Hopkins ran into the taxicab, he was being pursued by a police officer, who was yelling at him to stop. 8/15/11RP 44. Hopkins told Yesheberu to drive, and threatened to

¹ Mary Brown pleaded guilty to Rendering Criminal Assistance in the Second Degree.

shoot him if he didn't comply. 8/15/11RP 18. Still photographs portraying the man entering the taxicab were offered into evidence. 8/15/11RP 27. Mary Brown identified that man as Hopkins. 8/16/11RP 43. As the police approached, the taxi, Hopkins left the car and ran. 8/16/11RP 44. Mary Brown remained in the car. 8/16/11RP 44.

Hopkins was arrested five days later in a hotel he was sharing with Mary Brown. 8/16/11RP 79. He was placed in the King County Jail. Sergeant Catey Hicks of the King County Department of Adult and Juvenile Detention testified that one of her responsibilities is to monitor inmate mail. 8/15/11RP 93. Incoming mail is screened for potential criminal activity, escape plans, and suicidal thoughts. 8/15/11RP 93. Some outgoing mail for selected inmates is also screened. 8/15/11RP 93. A letter was flagged that was sent from Thomas Hopkins to Mary Brown. 8/15/11RP 94. Sergeant Hicks forwarded that letter to the prosecutor. 8/15/11RP 95. While she knew it was sent from Hopkins, she did not know who wrote the letter. 8/15/11RP 95.

Mary Brown was in a dating relationship with Hopkins for approximately 20 years. 10/16/11RP 18. They have one child together. 10/16/11RP 39. They lived together off and on for that

20 year time period, and raised their child together. 10/16/11RP 39. Ms. Brown has not known Hopkins to suffer from a mental illness. 10/16/11RP 51. Ms. Brown visited Hopkins in jail approximately once each week. 10/16/11RP 49. During these visits, they discussed the case against them, and his mental condition. 8/16/11RP 50. Hopkins told Ms. Brown that he was going to fake hearing voices in order to get out of the case. 8/16/11RP 51.

Mary Brown has previously received letters from Hopkins. 8/16/11RP 52. She has seen his handwriting "a lot of times." 8/16/11RP 53. She testified that she was able to recognize his handwriting, and was very confident that Hopkins wrote the letter that had been intercepted by the jail staff. 8/16/11RP 53. In the letter, Hopkins asked her not to testify, stating that no one from the bank would be able to identify him. 8/16/11RP 54. There was no objection to any of this testimony at the time of its admission.

At a pretrial hearing, the Court admitted the letter, subject to the foundation being laid. 8/10/11RP 72. At a recess after Ms. Brown testified to the contents of the letter, defense objected that the foundation for the letter had not been laid. 8/16/11RP 60. The State informed the Court that the actual letter would not be offered

into evidence, as there were disparaging comments that were not appropriate. 8/16/11RP 61. Defense had no further objections regarding the letter.

Defense presented the testimony of Dr. Jack Reiter as to the issue of whether Hopkins had diminished capacity at the time of the offense. Dr. Reiter diagnosed Hopkins as paranoid schizophrenic, with an anti-social personality disorder. 8/16/11RP 88. He did not conduct independent testing, but reviewed reports of other doctors. 8/16/11RP 103. Western State Hospital doctors evaluated Hopkins in connection with this case and believed he was malingering, or feigning his symptoms. 8/16/11RP 104. He had previously been diagnosed in 2003 with malingering. 8/16/11RP 106. Dr. Reiter reviewed the letter written by Hopkins and found it was consistent with a person who is able to read, write, form thoughts and express them. 8/16/11RP 115. Dr. Reiter opined that the letter was written by Hopkins during a time that he was on his medication, and thus it did not change his opinion on whether Hopkins possessed a diminished capacity at the time of the crime. 8/16/11RP 137.

C. ARGUMENT

1. THE COURT DID NOT ABUSE ITS DISCRETION IN PROPERLY ADMITTING TESTIMONY ABOUT THE CONTENTS OF THE LETTER.

The Court reviews the admission of evidence for an abuse of discretion. State v. Finch, 137 Wn. 2d 792, 810, 975 P.2d 967 (1999). When a trial court's exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons, an abuse of discretion exists. Id.

a. Sufficient foundation was laid to permit the written statements of Hopkins.

ER 901 is satisfied if sufficient proof is presented to permit a reasonable juror to find in favor of authentication. State v. Williamson, 136 Wash. App. 486, 500, 150 P.3d 111 (2007). The evidence that must be presented must support a finding that the matter is what it is claimed to be. ER 901(a). A prima facie showing is all that is required for admissibility. State v. Danielson, 37 Wn. App. 469, 471, 681 P.2d 260 (1984). A non-expert who demonstrates familiarity with an individual's handwriting may satisfy the authentication requirement. State v. Simmons, 52 Wash 132, 134, 100 P. 269 (1909). Distinctive characteristics of a writing may

also provide sufficient evidence for authentication. ER 901(b)(4).
Statements of a party-opponent are admissible. ER 801(d)(2).

Sergeant Catey Hicks stated that Thomas Hopkins sent the letter from the King County Jail. Mary Brown testified that she was familiar with Hopkins' handwriting, having seen it on prior occasions. She was confident that Hopkins, her partner of twenty years, wrote the letter. The letter was signed "Thomas," and the contents of the letter related directly to testifying in the trial relating to the two of them. There is no indication that Ms. Brown was planning on testifying in any other case. There was nothing in her cross-examination to suggest that she was charged in any other case. Given Ms. Brown's familiarity with Hopkins' handwriting and the contents of the letter, the Court did not err in its admission.

b. The probative value of the evidence outweighed any prejudicial impact.

A request of Hopkins that she not testify was admissible both through Ms. Brown and Dr. Reiter. The evidence was admissible as a statement demonstrating consciousness of guilt. Tampering with a witness is an attempt to obstruct justice, and is evidence of consciousness of guilt. State v. Sanders, 66 Wash. App. 878, 884,

833 P.2d 452 (1992). The fact that evidence is particularly powerful does not render it unduly prejudicial. A letter written by a defendant in jail implying that he killed his victim was properly admitted to show consciousness of guilt. There was nothing unfair about the admission. The statement was also admissible through cross-examination of Dr. Reiter. He testified that it demonstrated the defendant's ability to read, write, form thoughts and express them. This evidence was relevant and admissible to combat Dr. Reiter's claim that the defendant lacked capacity to commit the crime. His ability to form thoughts about the crime, and remember the witnesses in the bank is all relevant to the expert's opinion, and valid cross-examination evidence. It is not the type of gruesome material that is so prejudicial that it must be excluded. The Court did not err in its admission.

2. IF THERE WAS ERROR IN THE ADMISSION OF THE TESTIMONY, IT WAS HARMLESS.

A failure of a Court to balance the probative value versus the prejudicial impact of testimony admitted under 404(b) is reviewed under the non-constitutional harmless error standard. State v. Gogolin, 45 Wash. App. 640, 645, 727 P.2d 683 (1986). In Gogolin, a defendant convicted of second degree assault against

his wife argued that the admission of a prior assault should be subject to analysis under ER 404(b). The Court found that the evidence was relevant and probative, such that any admission without undergoing the balancing test was harmless error. The Court further noted that the improper admission of ER 404(b) evidence is also subject to harmless error analysis. An erroneous ER 404(b) ruling is not reversible error unless the court determines that “ ‘within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.’ ” State v Gogolin, 116 Wash.2d at 646 (1986).

The evidence in this case is far less impactful than the prior assault addressed in Gogolin. Here, the only evidence that was admitted was Hopkins' request that Mary Brown not testify. The evidence that Hopkins committed the attempted bank robbery was overwhelming. It was described in detail by the witnesses in the bank. He was identified by bank employees, law enforcement, and Ms. Brown. The fact that Hopkins admitted being present in his letter did not add such new information that its exclusion would have resulted in a different outcome. The only defense raised was that Hopkins had diminished capacity at the time of the offense.

His consciousness of guilt at the time he wrote the letter did not prevent the defense from raising the issue of diminished capacity. This evidence did not alter the defense expert's opinion. Mary Brown testified that Hopkins told her that he was going to present a fake mental illness. The contents of the letter were so minimal in comparison to the abundant evidence of guilt, that one cannot say that there is a reasonable probability that the outcome would have been different. Accordingly, any error in its admission must be considered harmless.

D. CONCLUSION

For the reasons stated above, the State respectfully requests that this Court affirm Hopkins' convictions.

DATED this 5th day of November, 2012.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

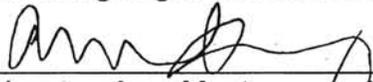
By: 

AMY MONTGOMERY, WSBA# 32068
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent
WSBA Office #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Maureen Cyr, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. THOMAS HOPKINS, Cause No. 67912-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name Amy Montgomery, WSBA #32068
Done in Seattle, Washington

11/5/12
Date November 5, 2012

2012 NOV 5 11:14:34
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE