

69206-2

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No. 69206-2-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MAURICE L. JORDAN,

Appellant.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 FEB 18 PM 4:54

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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REPLY BRIEF OF APPELLANT

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SARAH M. HROBSKY  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ARGUMENT

**Maurice Jordan's three letters to his father did not establish consciousness of guilt.**

Maurice's letters to his father were irrelevant and inflammatory, and improperly admitted as evidence of consciousness of guilt. The letters had no bearing on any fact of consequence to the outcome of his pending trial for robbery, assault, and intimidation of a witness. The first letter was a general reflection on fate and chance, and made no reference to the pending case at all. Ex. 9. In the second letter, Maurice profanely expressed his anger and generalized disagreement with his father's witness statement and urged his father to appear at trial and testify truthfully. Ex. 10. In the third letter, Maurice used profanity to express his anger that his father talked to other people about the case, when he denied doing so, but did not otherwise discuss the case. Ex. 11. In the absence of any tendency to prove or disprove a fact of consequence to the charges, the letters were inadmissible pursuant to ER 401 and ER 402.

Even if the letters were marginally relevant, they were laced with profanity, inflammatory, and more prejudicial than probative of any fact of consequence. As Miller Jordan testified, the letters merely were "insulting type of things, things you wouldn't say to your father" and "inappropriate to write – a son writing his father that," but they "didn't mean anything,

because they didn't even make sense.” 7/17/12 RP 137; 7/18/12 RP 16. Accordingly, whatever marginal relevance can be attributed to the letters, their probative value was substantially outweighed by the danger of unfair prejudice and they were inadmissible pursuant to ER 403.

The State argues the letters demonstrate consciousness of guilt because two of the three letters referred to the pending charges and “resentfully” commented on Miller Jordan’s witness statement and his “cooperation with prosecutors.” Br. of Resp. at 6. This argument mistakenly conflates consciousness of the pending charges with consciousness of guilt of those charges.

The State implicitly concedes the letters were not threatening, when it argues, “[A] threat is not required in order to influence a witness’ testimony.” Br. of Resp. at 8; *see also* Br. of Resp. at 12 (“even if the letters did not contain any specific threats...”). Yet, the trial court admitted the letters on the grounds “consciousness of guilt [is] shown by sending abusive or threatening letters to a potential witness,” not because it found Maurice was trying to influence his father’s testimony. 7/11/12 RP 71.

In light of the State’s concession, the only remaining ground for the trial court’s decision is the “abusive” nature of the letters. The State cites several cases that found consciousness of guilt was established by

evidence of witness tampering or an attempt to prevent an adverse witness from testifying. Br. of Resp. at 7-10 (citing *State v. Rodriguez*, 163 Wn. App. 215, 259 P.3d 1145 (2011); *State v. Moran*, 119 Wn. App. 197, 81 P.3d 122 (2003); *State v. Sanders*, 66 Wn. App. 878, 8334 P.2d 452 (1992); *State v. Kosanke*, 23 Wn.2d 211, 160 P.2d 541 (1945); *State v. McGhee*, 57 Wn. App. 457, 788 P.2d 603 (1990)). Here, however, Maurice affirmatively encouraged his father to appear at trial and testify truthfully, writing, “I just want you to show up and tell the truth.” Significantly, none of the above cases admitted the evidence because of its “abusive” nature. The State’s reliance on these lines of cases is misplaced.

The State characterizes Maurice’s statement that his testimony would differ from Miller Jordan’s testimony as “arguably” an attempt to influence Miller Jordan’s testimony. Br. of Resp. at 12. As this Court has cautioned in the in the context of flight as evidence of guilt, however, “the circumstance or inference of consciousness of guilt must be substantial and real, not speculative, conjectural, or fanciful.” *State v. Freeburg*, 105 Wn. App. 492, 498, 20 P.3d 984 (2001). “Arguably” is an insufficient basis to justify admission of the letters.

In the alternative, the State argues the erroneous admission of the letters was harmless. Br. of Resp. at 13-14. Yet, the letters were laced with profanity and evidenced an abiding bitterness, and the strained father-

son relationship permeated the trial. Moreover, the State repeatedly referred to the letters in closing argument, and quoted the term “tragedy” from one letter at least six times. 7/19/12 RP 113, 114, 117-18, 120, 127.


On this record, the admission of the irrelevant but inflammatory letters was prejudicial and requires reversal.

B. CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Brief of Appellant, Maurice Jordan requests this Court reverse his conviction and remand for a new trial.

DATED this 18<sup>th</sup> day of February 2013.

Respectfully submitted,

  
SARAH M. HROBSKY (12352)  
Washington Appellate Project (91052)  
Attorneys for Appellant

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STATE OF WASHINGTON,	)	
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	)	
MAURICE JORDAN,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, NINA ARRANZA RILEY, STATE THAT ON THE 18<sup>TH</sup> DAY OF FEBRUARY, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> MAFE RAJUL KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____
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**SIGNED** IN SEATTLE, WASHINGTON THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2014.

x 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710