

70807-4

70807-4

No. 70807-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JAMES WILLIAM SCHUMACHER,

Appellant.

RECEIVED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
OCT 7 2011 4:11

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

APPELLANT'S REPLY BRIEF

MAUREEN M. CYR
Attorney for Appellant

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

TABLE OF CONTENTS

A. ARGUMENT IN REPLY 1

**Ms. Schumacher’s out-of-court statements expressing fear of
Mr. Schumacher were not relevant or admissible because Ms.
Schumacher’s state of mind was not at issue** 1

B. CONCLUSION..... 4

TABLE OF AUTHORITIES

Cases

State v. Athan, 160 Wn.2d 354, 158 P.3d 27 (2007)..... 2

State v. Parr, 93 Wn.2d 95, 606 P.2d 263 (1980)..... 1, 4

A. ARGUMENT IN REPLY

Ms. Schumacher's out-of-court statements expressing fear of Mr. Schumacher were not relevant or admissible because Ms. Schumacher's state of mind was not at issue

The State contends Ms. Schumacher's out-of-court statements expressing fear of Mr. Schumacher were relevant and admissible because they "were further evidence that showed the jury the nature of the relationship between the defendant and Jean, a relationship that led to his motive to kill her, and a relationship that was a factor in determining whether the defendant could form the intent to kill." SRB at 31. But the State cites no authority for the proposition that a decedent's out-of-court statements expressing fear of the defendant are relevant and admissible to explain "the nature of the relationship between the defendant and [the decedent]." Instead, as argued in the opening brief, the decedent's state of mind is generally not relevant in a murder prosecution. It may be relevant and admissible only if placed at issue by the specific defense raised, and only if relevant to explain the actions of the *decedent*, not the defendant. Here, neither of those conditions was met.

The general rule was set forth by the Washington Supreme Court in State v. Parr, 93 Wn.2d 95, 606 P.2d 263 (1980). There, the

court explained, “[i]n a homicide case, if there is no defense which brings into issue the state of mind of the deceased, evidence of fears or other emotions is ordinarily not relevant.” Id. at 103. The decedent’s fears or emotions *may* be relevant to rebut a claim of accident or self-defense, for example. But even then, evidence of the decedent’s state of mind is relevant and admissible only if “probative of the question whether that person would have been likely to do the acts claimed by the defendant.” Id. Contrary to the State’s argument in this case, “[t]estimony concerning the victim’s state of mind at, or prior to, the time of the occurrence in question, is not relevant and admissible to prove the acts of another person, namely the accused.” Id. at 105.

The case the State relies upon, State v. Athan, 160 Wn.2d 354, 158 P.3d 27 (2007), is consistent with these principles. In that case, two friends of the decedent testified that the decedent had told them she would not go out with the defendant and that he “g[ave] her the creeps.” Id. at 381. The Supreme Court held the decedent’s statements were relevant and admissible because “Athan himself put the victim’s state of mind into issue.” Id. at 383. Athan’s defense was that the victim had consensual sex with him and was then later murdered by someone else. Id. at 382-83, 382 n.6. Thus, he made “her feelings

toward him a relevant issue.” *Id.* at 383. But her feelings and state of mind were relevant and admissible only to rebut Athan’s claim that she had consensual sex with him. That is, they were admissible only to explain *her actions*, not his.

Here, Ms. Schumacher’s feelings and emotions were not at issue and therefore her out-of-court statements expressing fear of Mr. Schumacher were not relevant or admissible. Unlike in a case where the defense is accident or self-defense, Ms. Schumacher’s actions were not relevant. To the contrary, the evidence showed Ms. Schumacher was asleep at the time of the incident. 5/21/13RP 37-38, 131. Her feelings and emotions were not relevant to *Mr. Schumacher’s* state of mind, which was the central issue in the case. Her alleged fear of Mr. Schumacher some years earlier was not relevant to show whether he had the capacity to form an intent to kill on this occasion.

To some extent, the nature of the relationship between the defendant and the decedent is always relevant in a murder case. But that does not mean that any evidence tending to bear on the nature of the relationship is admissible. Trial courts must still follow the rules of evidence in determining whether such evidence is admissible. In general, a victim’s out-of-court statements expressing fear of a

defendant are not admissible in a murder trial because of the strong likelihood that any relevance of the evidence will be outweighed by its prejudicial impact. See Parr, 93 Wn.2d at 100, 107. This danger is particularly significant where the defendant has no opportunity to cross-examine the declarant.

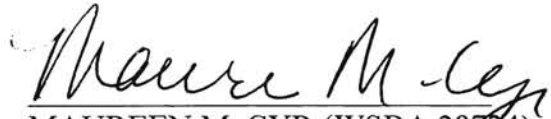
For these reasons and the reasons set forth in the opening brief, the trial court abused its discretion in admitting Ms. Schumacher's out-of-court statements under the state of mind exception to the hearsay rule.

B. CONCLUSION

For the reasons given above and in the opening brief, the conviction must be reversed because the trial court abused its discretion in admitting Ms. Schumacher's out-of-court statements under the state of mind exception to the hearsay rule; in admitting evidence of prior disputes between Mr. and Ms. Schumacher that were too remote in time; and in admitting Ms. Schumacher's out-of-court statements to medical providers regarding past "abuse." In addition, the exceptional sentence must be reversed because the aggravating factor is unconstitutionally vague to the extent it references "psychological

abuse” and because the evidence was insufficient to prove the
aggravator beyond a reasonable doubt.

Respectfully submitted this 6th day of October, 2014.


MAUREEN M. CYR (WSBA 28724)
Washington Appellate Project - 91052
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 70807-4-I
v.)	
)	
JAMES SCHUMACHER,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 6TH DAY OF OCTOBER, 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:

<p>[X] DENNIS MCCURDY, DPA [paoappellateunitmail@kingcounty.gov] KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104</p>	<p>(X) () ()</p>	<p>U.S. MAIL HAND DELIVERY E-MAIL BY AGREEMENT VIA COA PORTAL</p>
<p>[X] JAMES SCHUMACHER 368717 WASHINGTON STATE PENITENTIARY 1313 N 13TH AVE WALLA WALLA, WA 99362</p>	<p>(X) () ()</p>	<p>U.S. MAIL HAND DELIVERY _____</p>

SIGNED IN SEATTLE, WASHINGTON THIS 6TH DAY OF OCTOBER, 2014.

X _____ 

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