

The Accused's Letter to the Victim



Know Your Rights

by Atty. Jay C. Howell

In a recent West Palm Beach case, a bizarre set of circumstances unfolded during a criminal trial. The accused was charged with three counts of robbery with a firearm while wearing a mask and one count of armed burglary of a residence with an assault, also while wearing a mask. After the jury was selected, but prior to the start of the trial, the judge conducted a hearing on the defendant's motion to suppress statements which he had made to law enforcement. The court granted the motion and ruled that the statements would not be allowed into evidence before the jury.

It was then that the attorney for the accused told the judge about the letter.

At issue was a two-page handwritten letter purportedly signed by the defendant that one of the victims provided to the state attorney just before opening statement. According

to the victim, the letter had resulted from communications he had with the defendant during a time when they both resided in the same detention center. Using sign language, the perpetrator and the victim interacted on a couple of occasions.

The men met again in the detention center where the defendant told the victim that the defendant's mother had recently died and he was sorry for the crime he had committed against the victim. The defendant asked the victim to help him by testifying that he had not been involved in the robbery and armed burglary. The men met another time when the victim became concerned about reprisals from other inmates for being a "snitch." The victim again assured the defendant that he wouldn't testify against him, but asked the defendant to write a letter explaining exactly what he wanted him to say. Shortly thereafter, the victim received a letter.

The letter read, "Roger...my lawyer said if you rite (sic) that I dident (sic) do the crime it has to be writen (sic) and notarized like a witness stament (sic) so

you could do that for me I would like that very much please." The defendant apologized for the crime and indicated he didn't know it was the victim's house. The letter also made reference to the defendant's mother having died and discussed the state's plea bargain offer.

The victim brought the letter with him when he was transported from the detention center to the courthouse to testify. He gave it to the state attorney, who immediately shared it with the attorney for the accused.

In making his opening statement to the jury, the attorney for the accused explained that his client had not been present when the crimes were committed and that he had not confessed to the crimes. After several witnesses had testified and the jury had gone to lunch, the judge addressed the issue of the letter. The prosecutor advised that he intended to introduce the letter during the victim's testimony. Defense counsel objected, saying he was surprised and prejudiced by the letter. The judge indicated he would allow the letter to be introduced into

evidence.

At this point, the defense attorney asked for a continuance to have the letter examined by a handwriting expert, because the defendant was denying having written it. The judge overruled the defense objection, permitted the victim to testify concerning the letter, and allowed the letter to be admitted into evidence. The victim identified the defendant as one of the three robbers and testified that the defendant had acknowledged writing the letter. A co-defendant also testified against the defendant.

After the close of the defense case, an individual juror asked the judge whether the jury could "ask to verify the defendant's handwriting." The judge instructed the jury that they would have to rely upon their collective recollection of the evidence and that no further evidence would be presented to them. In closing, the prosecutor told the jury there were three big pieces of evidence: (1) the letter, (2) the victim's identification of the defendant and (3) the co-defendant's testimony. The jury convicted the defendant as charged.

The appellate court declared

that the key issue was whether the trial judge's denial of the motion for continuance resulted in prejudice to the defendant. Since the defendant denied writing the letter, its authenticity was at issue. If the handwriting analysis had supported the defendant's position that he didn't write the letter, the victim's credibility would have been severely undermined. The court concluded that this is one of those circumstances where the prejudice against the defendant was evident. The appellate court reversed the defendant's convictions and remanded the case for a new trial, thereby giving the defendant the opportunity to have the letter analyzed.

The case is Boland v. The State, and it was decided by the Fourth District Court of Appeal on January 24, 2007.

Jay Howell, a Jacksonville attorney, has been a State Prosecutor, a US Senate Investigator, and the founder of the National Center for Missing and Exploited Children. He represents crime victims in civil claims for damages and advocates for the legal rights of all victims.



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