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Evidence--Homicide--Self-Defense--Violent Acts of Deceased

Byron B. Randolph

West Virginia University College of Law

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the defendant, and second, whether the defendant has a defense. It is plain that the first question must be answered in the affirmative. *McClary v. Knight*, 73 W. Va. 385, 80 S. E. 866. The statute imposed a duty upon the defendant to guard the saw, he violated this duty and as a result the plaintiff was injured. Second, the question whether contributory negligence is a defense. The defendant is subject to the Workmen's Compensation Act, BARNES' CODE, Chapter 15P, section 15; and has failed to comply therewith. The Act, CODE, *supra*, chapter 15P, section 26, provides, in effect, that as to any employer subject to the Act who fails to comply therewith, such employer cannot set up contributory negligence as a defense. Therefore the statute bars this defense, and the decision of the court is clearly justifiable. The court in referring to the Compensation Act, said: "As the defendant was not a subscriber to the workmen's compensation fund, it cannot avail itself of the plaintiff's contributory negligence."

—ROSCOE H. PENDLETON.

EVIDENCE — HOMICIDE — SELF-DEFENSE — VIOLENT ACTS OF DECEASED.—In an indictment for murder the accused relied on self-defense, and was permitted to testify that deceased was a dangerous man, and had on one occasion shot at an officer who was attempting to arrest him. It was not shown that the accused saw this occurrence. The officer was not permitted to testify as to the incident. *Held*, that there was no error prejudicial to the accused. *State v. Peoples*, 145 S. E. 389 (W. Va. 1928).

In general, proof of the character or reputation of the deceased is inadmissible in homicide cases. *Evers v. State*, 31 Tex. Crim. 318, 20 S. W. 744; *State v. Madison*, 49 W. Va. 96, 38 S. E. 492.

On the issue of self-defense, however, communicated reputation for violence is admissible to show that the accused had reasonable apprehension of bodily harm. *Commonwealth v. Tircinski*, 189 Mass. 257, 75 N. E. 261. There is some conflict as to uncommunicated reputation of this character, but the better and majority rule is that such evidence is admissible to show the probability that the deceased did an act of aggression. *State v. McClausland*, 82 W. Va. 525, 96 S. E. 938; *Palmore v. State*, 29 Ark. 248; *Thomas v. People*, 67 N. Y. 224; 1 WIGMORE, EVIDENCE, (2nd ed.) §63.

More complex problems arise as to the manner of proving habits or character. The courts commonly confine such proof to the general reputation of the deceased for violence, and exclude all testimony of specific acts of violence, not closely connected in time with the fatal *recontre*. *Eggler v. People*, 56 N. Y. 642; *Alexander v. Commonwealth*, 105 Pa. 1; *People v. Henderson*, 28 Cal. 468; *State v. Beird*, 118 Ia. 474, 92 N. W. 694; *Muscoe v. Commonwealth*, 87 Va. 460, 12 S. E. 790. The rule is apparently based on two reasons: (1) Specific acts are not thought to support an inference as to character, on the theory that a person frequently does acts, either good or bad, which are utterly at variance with his real character. *Limbaugh v. Commonwealth*, 149 Va. 383, 140 S. E. 133; (2) the probative value of such evidence is outweighed by the fact that, if proof of such acts were admitted, so also would repelling evidence have to be admitted, and the side issues thus raised would be as numerous as the offenses. *State v. Walker*, 92 W. Va. 499, 115 S. E. 443; *People v. Farrell*, 137 Mich. 127, 100 N. W. 264; *State v. Roderick*, 77 Oh. St. 301, 82 N. E. 1082.

Such a rule has no application to the case where the accused had personal knowledge of the acts; for then the issue is not one of character, but whether the accused was reasonably apprehensive of danger to life or in fear of bodily harm. *People v. Harris*, 95 Mich. 87, 54 N. W. 648; *Garner v. State*, 28 Fla. 113, 9 So. 835; *State v. Feeley*, 194 Mo. 30, 92 S. W. 663; *State v. Burton*, 63 Kans. 602, 66 Pac. 633. The effect on the accused's mind would be substantially the same whether he gained his information of the dangerous character of the accused from his general reputation in the community or from specific acts.

The application of reason to new cases seems to be hopefully increasing in the use of the rules of evidence. Just as uncommunicated general character and uncommunicated threats, according to the better view, are admissible on the issue of whether the deceased was the aggressor, so it would seem that uncommunicated specific acts should be admissible, provided it can be said that such prior specific acts of violence tend to show that the deceased probably committed an act of aggression. It would seem, according to the behaviorists at least, that such acts would increase the probabilities. WATSON, *PSYCHOLOGY FROM THE STANDPOINT OF A BEHAVIORIST* (2nd ed. 1924) 320-321. Courts in the future may be influenced by the prestige of behaviorism, for which extravagant claims have been made.

As to the objection that the probative value of such evidence is outweighed by the fact that it would unduly complicate the

number of side issues, it would seem that a great deal should be left to the discretion of the trial court. "When the turbulent character of the deceased in a prosecution for homicide is relevant, there is no substantial reason against evidencing the character by particular instances of violent or quarrelsome conduct. Such instances may be very significant; their number can be controlled by the trial court's discretion; and the prohibitory considerations applicable to an accused's character, have here little or no force." 1 WIGMORE, EVIDENCE, (2nd ed. 1924) §198.

Upon the facts, the holding of the court in the principal case would seem correct. The accused had been allowed to testify as to the specific act of violence. The fact that the officer was not allowed to testify as to the same specific fact should not be held reversible error.

—BYRON B. RANDOLPH.

BULK SALES ACT—FRAUDULENT CONVEYANCES.—A sold his stock of merchandise to defendant in violation of the Bulk Sales Act. Defendant paid \$3,417.90 of the entire purchase price of \$3,420.18 to certain creditors of A, and the remainder of \$2.28 to A. The merchandise has been disposed of. At the time of the sale A owed plaintiff \$369.18 which is still unpaid. Plaintiff recovered judgment against A, had an execution issued thereon, and garnished the defendant by suggestion under CODE, chapter 141, section 10. The lower court found for the defendant-suggestee, and the supreme court reversed the decision. *Emmons-Hawkins Company v. Sizemore*, 145 S. E. 438 (W. Va. 1929).

Our statute, chapter 141, section 10, provides: "On a suggestion by the judgment creditor, that by reason of the lien of his writ of *feri facias*, there is a liability on any person other than the judgment debtor"; that that person can be reached only when he owes a debt to or has in his hands personal estate of the judgment debtor, for which debt or personal estate an action at law would lie. *Swann v. Summers, et al*, 19 W. Va. 115. Our Bulk Sales Act, chapter 74, section 32, provides that the sale in bulk, of any part, or the whole, of a stock of goods, wares, merchandise and fixtures, pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, shall be fraudulent and void as against the creditors of the seller, unless the