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Parent's Liability For Child's Negligence on Operating Family Automobile

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EVIDENCE OF CHARACTER AND THREATS UNDER A PLEA OF SELF DEFENSE IN HOMICIDE CASES.—Whether a defendant in a homicide case will prevail on a plea of self-defense will depend upon whether he was reasonably justified in believing from all the circumstances that he was in immediate danger of death or great bodily harm at the hands of the deceased. Obviously, therefore, self-defense is a subjective matter viewed from the standpoint of the accused. This fact has important considerations for the law of evidence. The known reputation of the deceased as a violent and turbulent man would naturally shed light upon the mental attitude of the prisoner towards the deceased when the homicide occurred. At the outset it must be borne in mind that evidence as to the bad character of the deceased for peace and quietness is not admissible in homicide cases, unless a plea of self-defense has been interposed. The mere fact that one is known to have a violent, ferocious and bloodthirsty disposition does not justify immediate resort to killing him; nor does it palliate the offense. A common limitation upon the introduction of such evidence is that other evidence shall be offered which seems to bring self-defense fairly into issue. This idea has been crystallized in several states under what text writers call the "overt act" doctrine which requires some act of possible aggression before the reputation evidence can be received. Whether sufficient evidence has been admitted to supply the preliminary overt act requirement is a question left to the sound discretion of the trial court. Some courts hold that a statement of the accused as to an overt act of deceased is not such proof of the act as to constitute of itself a predicate for the admission of evidence of the dangerous character of the deceased. Yet other courts say that such proof may be made by the testimony of the accused standing alone. Naturally the next inquiry concerns what traits of character can be proved. While the courts

1 State v. Evans, 33 W. Va. 417, 10 S. E. 972 (1890). Wood v. State, 92 Ind. 269 (1883).
2 3 L. R. A. (N. S.) 353, and note.
3 Ibid.
4 Wigmore, Evidence, § 246.
7 Bond v. State, 21 Fla. 738 (1886).
8 3 L. R. A. (N. S.), 356.
have used various phrases, one author sums them up by saying anything that would lead the deceased to make an unprompted aggression. Evidence that the deceased was a violent, vindictive, bloodthirsty and dangerous man is admissible, as well as any other trait indicative of violence, belligerency, uncontrolled passion and the like.

Regarding the mode of proving the bad character of the deceased it may be said that the general reputation of the deceased in the community where both reside is sufficient with nothing more, and the accused will be presumed to know this general reputation. But evidence of specific acts is not admissible. Yet when there is an issue as to whether defendant had reasonable ground to fear imminent danger, he may testify as to specific instances of violence on part of deceased coming under his own observation, or within his own knowledge.

Thus far we have viewed communicated character as bearing upon the reasonableness of the defendant's apprehension of violence. But the actual character of the deceased, although unknown to the defendant, is admissible in most jurisdictions for another reason and under different circumstances. In the latter instance an objective test is applied to determine whether or not deceased was the probable aggressor in cases where that fact is not clear.

While there are seemingly a few cases that repudiate this latter doctrine, investigation reveals that most of these are early decisions in which both courts and counsel erroneously applied the subjective test. For this reason a reputable authority says that the courts of these states may yet recognize the doctrine that uncommunicated character evidence will be admitted in cases involving the question of aggression.

A closely allied subject and one in which the underlying principles are practically the same is that of threats, both communicated and uncommunicated. Evidence of threats is clearly inadmissible in cases where there is no evidence of a hostile demonstration. No man has a right to kill another simply because the latter has made threats against him. "A hostile threat, even though made by the most lawless person, when unaccompanied by a demonstration of force at time of encounter will not justify nor miti-

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9 WIGMORE, EVIDENCE, § 246 (b).
11 13 L. R. A. 222, and cases cited.
12 2 L. R. A. (N. S.) 572.
14 WIGMORE, EVIDENCE, § 63.
15 WHARTON, HOMICIDE, (2 ed.), § 694; Oder v. Commonwealth, 80 Ky. 32 (1882).
gate a killing because it may be that the party making the threat has relented, or abandoned his purpose, or his courage may have failed, or the threat may have been idle gasconade.\textsuperscript{18} A hostile threat made by deceased against the accused and communicated to him prior to the killing is admissible as bearing upon the question of the prisoner’s apparent imminent danger of death or bodily harm at the time of the killing.

While the status of uncommunicated threats has been subject to fluctuations and contradictions in the decisions, the following doctrines may now be regarded as well settled. First, uncommunicated threats are not admissible to justify or mitigate a homicide since they could have had no influence on the mental state of prisoner at the time of the killing.\textsuperscript{17} Secondly, such threats are admissible to corroborate other evidence of communicated threats, in so far as they tend to counteract any presumption of fabrication by the witness who gave the first testimony.\textsuperscript{18} Lastly, in a case where there is any doubt as to who was the aggressor, evidence of uncommunicated threats is admissible insofar as it may tend to show the \textit{animus} of the deceased, and, in the absence of more direct evidence, show who was the probable aggressor.\textsuperscript{19}

\textit{M. H. M.}

\textbf{Persons—Marriage—Annulment.—}It may well be said that society does not desire that the lives of two young people be ruined because of one mistake. But on the other hand, society is vitally interested in preserving the dignity and sacredness of the marital relation. How can this be done if we permit people to be married in a spirit of jest, or to avoid inconvenience or embarassment, and then to have the status, for it is a status, dissolved at will? In a recent West Virginia case it appeared that at a party it was suggested, in a spirit of jest, that a young woman and man be married. It became rumored and appeared in the press that the parties were to have been married but had failed to do so. The next afternoon the parties met and the man asked the girl to marry him to save further embarassment and business inconvenience. It was agreed that they would be married in form only and that an annulment would be procured as soon as possible. A license was secured and the ceremony was performed by a minister in due form.

\textsuperscript{18} People \textit{v.} Scroggins, 37 Cal. 676 (1869).
\textsuperscript{17} Carrol \textit{v.} State, 23 Ala. 28, 58 Am. Dec. 282 (1853).
\textsuperscript{18} Cornelius \textit{v.} Commonwealth, 65 Ky. 432 (1855); See, \textit{Wharton, Homicide,} § 688.
\textsuperscript{19} Little \textit{v.} State, 65 Tenn. 393, (1873); Wiggins \textit{v.} People, 93 U. S. 465 (1873).