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Character of Deceased and Uncommunicated Threats by Deceased in Homicide Cases

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gage as an interest in land after the debt is barred, the court cannot help but adopt the rule in effect in the majority of jurisdictions, which seems more just and equitable.

ROBERT S. HAMMOND

CHARACTER OF DECEASED AND UNCOMMUNICATED THREATS BY DECEASED IN HOMICIDE CASES

As a general rule, evidence of the violent and dangerous character of the deceased is inadmissible in homicide cases. This rule is predicated upon the fact that the wicked as well as the good are entitled to the protection of the law, and that it in no degree excuses the taking of human life that the person slain was of bad character or reputation. However, an exception to the general rule exists in cases where the defendant admits the killing but claims to have acted in self defense. Here the character of the deceased is material for two purposes: first, to show the state of mind of the accused as a cause of his action at the time of the killing, and second, to aid in determining which party was the aggressor.

When one charged with murder asserts that he killed in self defense, his state of mind is a material factor as to the existence and reasonableness of apprehension of such violence by the deceased as to justify the defensive measures adopted by the defendant. The law recognizes the fact that men assailed defend themselves with alacrity and force in proportion to the violent and dangerous character of their assailants. It follows that an act of the decedent which, if considered independently of his character would not be sufficient to warrant extreme defensive measures, might, when observed and considered in connection with such character, arouse a belief of imminent peril, thereby justifying the defensive measures adopted.

In order for the accused to prove his state of mind and thereby show the reasonableness of his action by the introduction of evidence of the deceased's turbulent character, it is necessary that the accused first show that he had knowledge of such character prior to the killing. A failure to prove prior knowledge would completely defeat the purpose for which this evidence is admitted. It has been held in at least one case that such knowledge may be presumed.

The second purpose for which evidence of the violent character of the deceased is admitted is to determine whether it was the accused or the deceased who provoked the assault. In this situation

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1 Lang v. Ala., 84 Ala. 1, 4 So. 193 (1888), 13 R.C.L. Homicide, Sec. 219.
3 Karr v. State, 100 Ala. 4, 14 So. 851 (1894).
it is immaterial that the accused had no knowledge of the deceased's character prior to the killing. Where it clearly appears that the defendant was the aggressor this evidence is not admissible. The chief objection to the admissibility of evidence for this second purpose is that the jury is presented with the bad character of the deceased only since similar character of the accused cannot be shown unless he first introduces evidence of his good character.

Evidence of the bad character of a third person who was with the deceased at the time of the killing is permitted in order to prove that action by such third party in conjunction with action by the deceased forced the accused to resort to self defense, thereby relieving the accused of the charge of having provoked the assault.

A question closely associated with the admissibility of evidence of the deceased's character is that of uncommunicated threats made by the deceased against the defendant. Such evidence has been admitted to prove which party provoked the assault, the state of mind of the deceased and to corroborate threats which were communicated to the defendant prior to the killing.

Due to the fact that the threat was not brought to the knowledge of the defendant it cannot be relevant to the defendant's state of mind at the time of the killing. The threat is, however, probative of the state of mind of the person making it and if this state of mind embodies a plan or intention to attack the defendant then it is ultimately probative of the actual consummation of such an attack. Knowledge by the defendant of uncommunicated threats is not a necessary prerequisite to their introduction for the purpose of showing the deceased's state of mind. And, as in the analogous situation where it is sought to introduce evidence of deceased's violent character, it is reasoned that accused's lack of knowledge of the threat does not prevent its admissibility as bearing on the question of who provoked the assault.

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6 McLain v. Commonwealth, 171 Ky. 373, 188 S.W 377 (1916)
7 Morrison v. Commonwealth, 24 K.L.R. 2493, 74 S.W 277 (1903)
8 State v. Padula, 106 Comm. 454, 138 Atl. 456 (1927)
10 Miller v. Commonwealth, 241 Ky. 818, 45 S.W (2d) 461 (1932), Paton v. Commonwealth, 235 Ky. 845, 32 S.W (2d) 405 (1930)
12 Hargis v. Commonwealth, 135 Ky. 578, 123 S.W 239 (1909)
14 State v. Evans, 33 W Va. 426, 10 S.E. 792 (1890).
The third basis for the admissibility of uncommunicated threats is to confirm and corroborate evidence that certain communicated threats were made against the defendant and to counteract any presumption of fabrication by the witnesses who gave the testimony.

The law on these subjects is well settled in this jurisdiction and appears to the writer to conform with logic and justice.

HENRY H. BRAMBLET

A CRITIQUE OF THE TEST OF INSANITY IN CRIMINAL CASES IN KENTUCKY

Until 1843, the date of M'Naughten's Case, no attempt had been made to state an all inclusive test for insanity. If one consults the six or seven more important historical cases arising before 1843, it will be seen that instead of the court tendering to the jury a test for the degree of insanity necessary to render the defendant incapable of formulating the intent required for the particular crime, it has, in each case, given examples or illustrations from or by which the jury might be enabled to arrive at the proper verdict in that particular case.

The M'Naughten Case, however, proposed a concise, inclusive test for criminal irresponsibility by reason of insanity. The tests or rules connected with this case were propounded by the judges of England at the request of the House of Lords and presumably were the law of England at that time as they have proved to be since.

The tests were actually in regard to two main topics, delusional insanity and ordinary insanity. The test proposed for ordinary insanity was as follows: "to establish a defense on the ground of insanity, it must be clearly proved, that at the time of the act, the accused was laboring under such a defect of reasoning as not to know the nature and quality of his act, or, if he did, that he did not know that what he was doing was wrong." In explaining what was meant by "wrong," it was said that if the accused was conscious that the act was one that he ought not to do, and if it was at the same time contrary to the law of the land, it would be punishable. Therefore it would seem that the tendency to place the greater significance upon the legal rather than the moral wrong, as was done in the two previous cases, was overruled.

Kramer v. Commonwealth, 8 Ky Op. 428 (1875)
Clark and Fin. 200, 8 Eng. Rep. 718 (1843)