Louisiana Law Review

Volume 2 | Number 2
January 1940

Criminal Procedure - Homicide - Evidence of Dangerous Character and Prior Threats

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in Louisiana, an officer or director may contract with the corporation (at least where the latter is represented by a disinterested majority of the board of directors or by other competent agents), provided the transaction be free from any overreaching or unfairness.

K. J. B.

CRIMINAL PROCEDURE—HOMICIDE—EVIDENCE OF DANGEROUS CHARACTER AND PRIOR THREATS—In a prosecution for homicide the defendant relied on self defense. The trial judge excluded evidence as to the dangerous character of the deceased and as to two previous attempts upon the life of the defendant by the deceased on the ground that no "overt act" was shown to have been committed by the latter. On appeal, *affirmed:* (1) an overt act is a hostile demonstration of such a character as to create in the mind of a reasonable person the belief that he is in immediate danger of losing his life or suffering bodily harm;[1] (2) the proof of such hostile demonstration must be made to the satisfaction of the trial judge subject to the review of the Supreme Court before the evidence is admissible.[2] *State v. Stracner,* 190 La. 457, 187 So. 571 (1938).†

Ordinarily in a trial for homicide evidence of prior threats or the dangerous character of the deceased are inadmissible.[3] However, if the defendant claims the killing was in self defense, it becomes incumbent on him to satisfy the jury that he acted in a reasonable belief that he was in imminent danger of life or limb at the time he perpetrated the homicide. Hence his knowledge of the dangerous character of the deceased or threats on the defendant's life made by him and communicated to the latter are admissible for this purpose.[4] Furthermore in some jurisdictions, though the defendant had no knowledge of such facts, evidence thereof is admissible for the purpose of determining whether the deceased or the accused was the aggressor.[5]

† See The Work of the Louisiana Supreme Court for the 1937-1938 Term (1939) 1 LOUISIANA LAW REVIEW 314, 383.

1. Accord: State v. Brown, 172 La. 121, 133 So. 383 (1931); State v. Jones, 175 La. 1066, 145 So. 9 (1932).

2. Accord: State v. Brown, 172 La. 121, 133 So. 383 (1931); State v. Scarbrock, 176 La. 48, 145 So. 264 (1932); State v. Boudreaux, 185 La. 434, 169 So. 459 (1936).

3. Wharton, Criminal Evidence (11 ed. 1935) § 339.

4. Ibid.

5. Ibid. This exception has not been made in Louisiana generally, yet some few early cases held that such evidence was admissible to show who was the aggressor. State v. Robinson, 52 La. Ann. 616, 27 So. 124 (1900); State v. Lindsay, 122 La. 375, 47 So. 687 (1908); State v. Barksdale, 122 La. 788, 48 So. 264 (1909).

In most jurisdictions the defendant must introduce some proof of an overt aggressive act or hostile demonstration by the deceased before evidence of prior threats or the dangerous character of the deceased is admissible.[6] In the early Louisiana cases there was much conflict as to whether this preliminary proof was necessary.[7] However, the general rule above was adopted in 1928 by the legislature and incorporated in the Code of Criminal Procedure.[8]

The purpose of the rule is to prevent the jury from becoming prejudiced in the defendant's favor where no situation which could even remotely be termed "self-defensive" is presented by the evidence. By requiring preliminary proof of an overt act, the court demands some guarantee that the evidence will be employed for its proper purpose. The court has apparently lost sight of the reason for the rule and has interpreted the term "overt act" in the article as a hostile demonstration of such a nature as to create in the mind of a reasonable person the belief that he is in immediate danger of losing his life or suffering bodily harm.[9] Chief Justice O'Niell has repeatedly attacked this interpretation. He points out that the "overt act" which according to this view would be necessary as a foundation for the introduction of this type of evidence is the same "overt act" which makes out self defense.[10] Therefore, after the required foundation

6. Some courts have adapted the broad limitation that "other evidence" which serves to bring self defense fairly to issue must be given first, while others require some "appreciable evidence" of acts on the part of the deceased. 1 Wigmore, Evidence (2 ed. 1923) § 246.

7. In the following cases evidence of prior threats and dangerous character was admitted and no mention was made of the necessity of the proof of an "overt act" on the part of the deceased: State v. Cooper, 32 La. Ann. 1084 (1880); State v. Ricks, 32 La. Ann. 1098 (1880); State v. McNeely, 34 La. Ann. 1022 (1882). In other cases the court held such evidence was admissible to prove who was the aggressor: State v. Robinson, 52 La. Ann. 616, 27 So. 124 (1900); State v. Rideau, 116 La. 245, 40 So. 691 (1906); State v. Lindsay, 122 La. 375, 47 So. 687 (1908).

In State v. Pairs, 145 La. 443, 82 So. 407 (1919), threats were admitted to corroborate evidence for the defendant that the accused provoked the difficulty. On rehearing the court found that there was sufficient evidence of "overt act." In the next case to come before the court, State v. Sandiford, 149 La. 933, 90 So. 261 (1921), the court held that such evidence was inadmissible without showing of hostile demonstration on the part of the deceased. This was affirmed on rehearing.

8. Art. 482, La. Code of Criminal Procedure: "In absence of proof of hostile demonstration or overt act on the part of the person slain or injured, evidence of his dangerous character or of his threats against the accused is not admissible."

9. State v. Brown, 172 La. 121, 133 So. 383 (1931); State v. Jones, 175 La. 1066, 145 So. 9 (1932); State v. Maine, 183 La. 499, 164 So. 321 (1935); State v. Stracner, 190 La. 457, 182 So. 571 (1938).

10. Chief Justice O'Niell has also attacked the constitutionality of the rule. He argues very strongly that it violates Art. 7, § 10 of La. Constitution

is laid the evidence serves no purpose, because the defendant has already proved that he acted in self defense.[11]

The question of whether a particular hostile demonstration was of such a nature as to place the defendant in a reasonable fear of immediate death or bodily injury is one which must be determined by the jury. Thus the inquiry is directed to the situation as it appeared to the defendant at the time of the killing. Evidence of prior threats by the deceased which are known to the defendant, or evidence of his bad character, is important only in determining the reasonableness of the defendant's belief that the defensive measures were necessary. If this has already been established by other testimony, proof of prior threats and dangerous character of the assailant would be superfluous. Hence, this evidence is excluded by the Louisiana courts in the only situation in which it could be of real value to the defendant. A better rule requires proof of some overt aggressive act as a condition precedent; however, the hostile demonstration need not be one which, taken alone, would reasonably warrant extreme defensive measures.[12]

H. W.

EVIDENCE—TESTIMONY OF PHYSICIANS AS TO MENTAL CAPACITY —Eleven months after conveying his farm to defendant, the grantor was pronounced incapable of caring for his estate because of old age and physical infirmities. He was not found to be insane. His conservator sought to set aside the conveyance, contending that the grantor was mentally incompetent when it was made. Physicians and laymen who were acquainted with the

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of 1921, which states: "The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone . . ." Art. 19, § 9 states: ". . . The jury in all criminal cases shall be the judges of the law and of the facts on the question of guilt or innocence, having been charged as to the law applicable to the case by the presiding judge." He argues that where the defendant invokes a plea of self-defense, the question of whether the deceased was the aggressor in the fatal difficulty is a question of fact upon which the guilt or innocence of the defendant depends, and that proof of prior threats are admissible only for the purpose of showing who was the aggressor when the question is in doubt, and to allow the judge to withdraw that question from the jury and decide it is in violation of Art. 19, § 9; and for the Supreme Court to review such a decision is in violation of Art. 7, § 10. The courts have refused to hold this a question of law. State v. Sandiford, 149 La. 933, 90 So. 261 (1921); State v. Brown, 172 La. 121, 133 So. 383 (1932); State v. Stracner, 190 La. 457, 182 So. 571 (1938).

11. For example, in State v. Williams, 46 La. Ann. 709, 711, 15 So. 82, 83 (1894), the court said: "In order to constitute the overt act that would justify the taking of human life there must be some demonstration made by the deceased against the accused of such a character as to impress upon him that he was in imminent danger of his life or some great bodily harm."

12. State v. Padula, 106 Conn. 54, 138 Atl. 456 (1927).