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Evidence—Character Evidence to Prove ParticuLaw Relevant Traits Admissible

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conviction, even though the evidence supports the verdict, if the error committed was substantial. Apologies exchanged between counsel after stormy arguments and instructions by the court will not rectify the impression created in the minds of the jury from such abhorrent proceedings.

L. H. S.

CHARACTER EVIDENCE TO PROVE PARTICULAR RELEVANT TRAITS ADMISSIBLE

In *People v. McDowell*,^{30a} the Court of Appeals reversed a conviction of second degree assault, affirmed by the Appellate Division,^{30b} on the erroneous exclusion of evidence. The excluded evidence dealt with defendant's reputation for peacefulness in the community in which he resided and the alleged hostility of the complaining witness.

The exclusion of the evidence regarding the hostility of the witness was clearly error, the New York rule being ". . . that the hostility of a witness toward a party, against whom he is called, may be proved by any competent evidence."^{30c}

The leading case in New York on the rules governing the admissibility of character evidence is *People v. Van Gaasbeck*,³¹ in which the Court reached three conclusions. First, character evidence is admissible to prove only relevant traits, *i.e.*, in a murder charge, evidence as to peacefulness is competent but soberness would not be; second, the evidence as to the relevant traits is not admissible if it is based on the witness' personal knowledge rather than his knowledge of the defendant's reputation in the community; and third, negative testimony is competent, *i.e.*, having known him for thirty years and not having heard anything contrary to a good character about him is admissible to give rise to an inference of good reputation.

In *Van Gaasbeck*, two witnesses, who had known the defendant for twenty-five to thirty years, were called. The first was asked, "What do you say his reputation is?" The objection was that there was no foundation and that it was not the proper way to show character. The second was asked, "What do you say of it?" Both questions were excluded upon objection. On appeal, the Court of Appeals looked to the testimony immediately preceding the first question which had established that the witness knew defendant's reputation for peacefulness. This served to limit the question to a particular, relevant trait, in which case it was proper. In view of the testimony of the second witness that he knew defendant as being a peaceful, quiet man, the Court held the second question properly excluded as probing not reputation but personal knowledge.

In the instant case, it appears that two of the questions properly excluded were: "Are you familiar with his general reputation?" and "Do you know the general reputation of the defendant?" These questions are too broad to be

30a. 9 N.Y.2d 12, 210 N.Y.S.2d 514 (1961).

30b. 10 A.D.2d 900, 202 N.Y.S.2d 267 (4th Dep't 1960).

30c. *People v. Lustig*, 206 N.Y. 162, 99 N.E. 183 (1912).

31. 189 N.Y. 408, 82 N.E. 718 (1907).

admissible under the test established in *Van Gaasbeck*. They require a proper foundation, establishing that the testimony sought would pertain only to a particular, relevant trait. Also properly excluded, on the grounds that it pertained not to reputation but sought evidence as to prior acts which could only be admissible if offered to show defendant's state of mind at the time of the alleged crime, was "Have you had any trouble with the defendant?"³² Also excluded was the question, "Did you know defendant's reputation for soberness, is it good or bad?" While the question may have been improper in form, since it is necessary to establish knowledge of reputation before an opinion can be elicited as to its nature, it probably should have been admitted along with "Do you know his reputation for peacefulness?" It is clear that these questions would have been admitted if they were in the form of "Did you hear of" or "Have you heard."³³

It is clear, however, that evidence as to reputation of the defendant's relevant character traits should be admitted and that its exclusion may constitute reversible error. Therefore, it is submitted that when questions pertaining to character and reputation are excluded, it would be good practice for the trial judge to indicate exactly where the objection lies so that the pertinent evidence may be admitted.

R. E. N.

EXPERT NEED NOT TESTIFY AS TO THE REASONS FOR HIS OPINION

The question presented in *People v. Crossland*³⁴ is whether an expert witness is required to state the reasons for his opinion on direct examination in a prosecution for possession of policy slips. The Court of Appeals, unanimously reversing the Appellate Division,³⁵ held that a police officer, testifying as an expert, is not required to explain the technical basis of his opinion as part of the People's case.

The State produced one witness, a police officer, who testified that he had observed defendant Crossland on a certain day receive a slip of paper and money from defendant Davis, and that he had been able to retrieve the slip of paper from the defendants. The slip of paper was introduced into evidence. The officer, a qualified expert on policy slips, "then testified that in his opinion the writings on the slip of paper represented 17 'plays' on mutual race horse policy." This constituted the People's case, and defendant Crossland was convicted for possession of policy slips.

The Appellate Division reversed this conviction on the basis of *People v. Pierson*,³⁶ *People v. Oak*,³⁷ and *People v. Harris*.³⁸ In these cases convictions

32. See *Dallas R. & T. Co. v. Farnsworth*, 148 Tex. 584, 227 S.W.2d 1071 (1950).

33. *Michelson v. United States*, 335 U.S. 469 (1948).

34. 9 N.Y.2d 464, 214 N.Y.S.2d 728 (1961).

35. 12 A.D.2d 467, 208 N.Y.S.2d 902 (1st Dep't 1960).

36. 279 App. Div. 509, 111 N.Y.S.2d 39 (1st Dep't 1952).

37. 283 App. Div. 1018, 131 N.Y.S.2d 339 (1st Dep't 1954).

38. 1 A.D.2d 821, 150 N.Y.S.2d 151 (1st Dep't 1956).