

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT EARL HAWKINS,

Defendant-Appellant.

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UNPUBLISHED

March 30, 1999

No. 203832

Ingham Circuit Court

LC No. 96-071363 FC

Before: Doctoroff, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant of first-degree felony murder, MCL 750.316; MSA 28.548; two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2); assault with intent to murder, MCL 750.83; MSA 28.278; and carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant's sole claim of error involves the trial court's interpretation of MRE 404(a)(2) and its exclusion of evidence that defendant's surviving victim had carried guns in the past for protection. We affirm.

**I. Basic Facts And Procedural History**

On the evening of December 10, 1996, defendant's victims, Charles Williams and Deonyte Williams, were attending a basketball game at Sexton High School in Lansing when Deonyte Williams received a message on his pager from defendant. Deonyte Williams testified that he and Charles Williams had been acquainted with defendant for approximately seven years, that he called defendant after the game and that defendant asked the two to meet him. Defendant had allegedly indicated that he had some marijuana that he wanted to smoke and that he wanted Deonyte Williams to give him a ride somewhere. Defendant confirmed that he paged Deonyte Williams but claimed it was to arrange to purchase crack cocaine and to get a ride to the west side of Lansing. He stated that he did not possess any marijuana when the three met.

Defendant met the two victims at a convenience store and got into the GMC Tahoe pick-up truck that Deonyte Williams had borrowed for the evening. Charles Williams was riding in the front seat, and defendant was riding in the back, positioned between the two front seats. Deonyte Williams

claimed that approximately two minutes after they picked defendant up, defendant shot Charles Williams in the head for no apparent reason. Defendant, however, testified that he was *not* carrying a weapon. Defendant stated that when he got into the truck, he gave Deonyte Williams \$50 for crack cocaine, but the quality of the drugs he received for his money was poor so he demanded his money back. According to defendant, Deonyte Williams refused to return the money and pulled a gun. Defendant stated that they struggled over the gun and it accidentally discharged, hitting Charles Williams. As noted below, there was testimony that Charles Williams was shot twice in the head, a fact logically at odds with defendant's story of an accidental discharge.

Deonyte Williams testified that after Charles Williams had been shot, defendant pointed the gun at him and told him to "run everything." Deonyte Williams stated that this was street slang ordering him to give defendant everything in his pockets. Deonyte Williams claimed that he then jumped out of the moving vehicle into oncoming traffic and ran toward the parking lot of a nearby apartment complex. Defendant verified that Deonyte Williams jumped out of the vehicle; defendant claimed that he then climbed over the seat, parked the truck, and then got out and began chasing Deonyte Williams.

Deonyte Williams testified that defendant caught up with him and shot him in the leg and later in the hand. He stated that when the gun jammed, defendant proceeded to beat him with his fists and with the gun, hitting him thirty to fifty times. Deonyte Williams claimed that defendant was saying, "[B]itch, you gotta die. You gotta die, bitch. I got to make sure you die." Deonyte Williams testified that defendant appeared to be working with the gun and that he eventually pointed it at Deonyte Williams's forehead and pulled the trigger, only to find the gun was empty. He also claimed that defendant took approximately \$70 to \$100 from his pocket and that defendant bit a ring off his finger. He stated that he was screaming for help throughout the ordeal and blacked out several times. Defendant verified that he had taken cash from Deonyte Williams, but claimed that he took his "\$60.00" back.

Deonyte Williams also testified that he heard a car arrive at some point and he heard defendant tell someone, "Tony, man, Tony, man, chill out. I got something for you, just don't say anything. Chill out, dog." He testified that the other person, "Tony," said that he had not seen anything and that "Tony" continued walking into the building.<sup>1</sup>

Defendant admitted that he was angry and that he chased Deonyte Williams, intending to hurt him, but denied attempting to kill him. Defendant claimed that he was angry because Deonyte Williams still had his money and because Deonyte Williams had threatened him with the gun. Defendant claimed that the gun discharged accidentally while he was beating Deonyte Williams.

Seven witnesses testified to having observed the events in the apartment complex parking lot first-hand.<sup>2</sup> Witnesses consistently identified the attacker as wearing a white, or light-colored, starter jacket with other colors on it, and some witnesses knew defendant by name but did not know the victim. Several claimed to have called the police.

Deonyte Williams testified that he eventually heard a police siren, and that a car pulled up and defendant ran away. He testified that he told the police who had attacked him and urged them to follow defendant. Deonyte Williams was taken by ambulance to the hospital; the treating physicians testified

that Deonyte Williams had a number of injuries, including lacerations to the head, gunshot wounds to the hand and leg, and a shattered hip bone from a bullet. Deonyte Williams's leg injury required surgery.

The police and paramedics testified that Charles Williams was dead when they arrived on the scene. A pathologist testified that Charles Williams had died of two gunshot wounds, each fired from one or two inches away from his head. Marijuana was detected in Charles Williams' urine.

A trained police dog tracked to a location where defendant was attempting to hide or escape under a vehicle. Officers ordered him to come out from under the vehicle, and when he refused, they used the dog to pull him out. Eventually, defendant was handcuffed and transported to the hospital. The police dog located a gun in a barrel filled with leaves in the same block as defendant was found and along the path that defendant was tracked. The police also found two jackets in the same area, a blue "starter" jacket and a sweater-type jacket. The police noted that there was blood on the handle of the gun. Residents at the addresses where the items were found did not recognize the gun or the jackets as belonging to them. Defendant and his girlfriend identified the jackets depicted in trial exhibits as those he had worn when he left his girlfriend's house on the evening of December 10 to meet Deonyte Williams.

At trial, defense counsel requested to be allowed to ask Deonyte Williams if he had carried a gun for protection in the past. The trial court heard arguments concerning this testimony and the testimony itself outside the presence of the jury and excluded the evidence. A jury convicted defendant on all counts and this appeal followed.

## II. Standard Of Review

This Court reviews questions of law *de novo*. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997). We review decisions regarding the admission or exclusion of evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). The issue has been preserved for appeal.

## III. Exclusion Of Testimony

Here, the testimony at issue was offered under MRE 404(a)(2) to show that Deonyte Williams had acted in conformity with a known character trait; that is, carrying a gun. Black's Law Dictionary indicates that "character" refers to "moral qualities," "distinguishing attributes," a "moral predisposition or habit," and "ethical qualities." Black's Law Dictionary (6<sup>th</sup> ed). This suggests that "character" refers to an internal operating mechanism or set of guiding principles. Black's goes on to include "[a] person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise, is obtained." "Character," as the term is typically used and defined, is an abstract concept – part of a person's moral or ethical makeup. Thus, while the fact that a person generally carries a gun may speak to the person's character for violence, for example, carrying a gun is not, in and of itself, a *character* trait.

Case law is very limited in this area, and there are no Michigan appellate decisions directly on point. The Arizona Court of Appeals has held that a victim's general reputation for carrying a gun is not necessarily probative of whether the victim has an aggressive character. *State v Zamora*, 681 P2d 921 (Ariz App, 1984). In the same case, that court also upheld the exclusion of evidence of the victim's gang membership under the Arizona counterpart to MRE 404(a)(2), stating that such evidence was not relevant to whether the victim had an *aggressive character*, and that such evidence would be properly classified as *prior acts* rather than as a character trait. *Id.* at 924. Similarly, the Arkansas Supreme Court has upheld a trial court's decision that evidence of a victim's religious dedication and willingness to help others is not a character trait but is, rather, evidence of habit. *Derring v State*, 619 SW2d 644 (Ark, 1981). That court discussed the distinction:

Character and habit are closely akin. Character is a generalized description of one's disposition, or of one's disposition in respect to a general trait, such as honesty, temperance, or peacefulness. "Habit," in modern usage, both lay and psychological, is more specific. It describes one's regular response to a repeated specific situation . . . . A habit . . . is the person's regular practice of meeting a particular kind of situation with a specific type of conduct. [*Id.*, 352, quoting McCormick, Evidence, (2d ed), § 195.]

The court went on to define character as "*the sum of one's habits* though doubtless it is more than this." *Id.* (emphasis added). The court further found that the trial court had not abused its discretion in classifying the victim's rigid daily schedule and frequent contact with his parents as habits rather than as pertinent character traits. *Id.*<sup>3</sup>

While the above cases are not binding precedent in this Court, they are persuasive and suggest that carrying a gun may be *evidence* of an underlying character trait, but is not a character trait itself. In any event, it is unnecessary for this Court to determine whether carrying a gun is a character trait for purposes of MRE 404(a)(2) because defendant did not offer the evidence in the proper form. MRE 405 requires that admissible character evidence be presented as reputation or opinion testimony. While it is questionable whether a witness may properly testify regarding his or her own reputation, defense counsel requested that he be allowed to ask Deonyte Williams only one question: whether he had carried guns in the past for protection. This question would have elicited neither reputation nor opinion. Rather, it asked for specific instances of conduct precluded by MRE 404(b). Deonyte Williams testified outside the presence of the jury that more than a year had passed since he had possessed a gun and that his friends did not know that he carried a gun except on isolated occasions. Thus, the trial court did not abuse its discretion, *Starr, supra*, by precluding the proffered testimony.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ Michael R. Smolenski  
/s/ William C. Whitbeck

<sup>1</sup> Tony Shaw testified that he saw defendant on the night of the incident, and initially thought he was witnessing “a couple of guys horseplaying.” Shaw stated that he eventually “told Robert [defendant] to stop ‘cause he was killing the guy” and that he believed defendant was attempting to kill the victim. Shaw claimed that the victim was covered with blood and that defendant may have been beating him with some type of object because it did not sound like his hand hitting the victim, but rather “thump sounds.” Shaw testified that he recognized defendant as Robert Hawkins, an acquaintance he had known for four or five years when defendant said, “come here, Tony. I’ll take care of you.” Shaw claimed that he was frightened and did not know what defendant meant, so he continued walking and went into the apartment building. Shaw testified that he looked out the apartment window and saw defendant continuing to hit the victim. Defendant did not remember seeing or talking to Tony Shaw.

<sup>2</sup> Ramona Wells testified that she heard a vehicle squealing and crashing into something. When she looked out the window, she saw that a black Blazer had crashed into a red van in the parking lot of her building. The driver’s door was open, and she saw someone lying in the vehicle on the passenger side. Wells testified that she saw two men on the ground wrestling, with one of them screaming for help, and that she heard several gunshots. Wells stated that she could not tell who had the gun, but when it fell to the ground the man on top picked it up, pointed it at the victim’s face and tried to shoot, but the gun was empty. Wells claimed that the person with the gun then began kicking the victim and beating him in the head and the face with the gun. Wells stated that the gun fell more than once, and that the same man picked it up each time. Wells testified that she called the police as soon as she heard the first gunshot and saw the men fighting, and that she described to the police what was happening in the parking lot while it was occurring. Wells also testified that she saw someone she recognized as “Tony” walk by during the altercation, pause, and continue walking into the apartment building, but that she did not hear any conversation between Tony and the men fighting. Other witnesses claimed to have seen someone walk past the men as well.

Several witnesses testified to having heard the crash, heard shots, heard the victim calling for help and that they saw defendant beating the victim repeatedly in the head with the gun, kicking the victim, and picking the victim’s head up and hitting it on the ground.

<sup>3</sup> Defendant does not suggest that the victim had a habit of carrying a gun, and there was insufficient evidence to establish that the victim’s past gun use rose to the level of a “habit” for purposes of MRE 406.