

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST CHAMBERS,

Defendant-Appellant.

UNPUBLISHED

October 25, 2005

No. 254406

Wayne Circuit Court

LC No. 01-010732-01

Before: Fitzgerald, P.J., and Cooper and Kelly, JJ.

COOPER, J. (*concurring*).

I agree with the majority opinion of my colleagues that the prosecution presented overwhelming evidence to support defendant's convictions and, therefore, we should affirm. However, I disagree that evidence regarding the various weapons found in defendant's home following the shooting was admissible. These weapons were not connected to the current crime in any way. The majority contends that this evidence was relevant to show that defendant had ready access to weapons with which to commit this crime. Yet this evidence established nothing more than defendant's propensity to commit the crime in question; to show that, as he possessed many weapons, he was more likely a violent criminal.

Justice Cardozo, in a well-known opinion, articulated the dangers of propensity evidence while sitting on the New York Court of Appeals seventy-five years ago. In that case, which is nearly factually identical to the case at hand, he condemned the use of such evidence to establish the murderous character of the accused.¹ Protecting the innocent has always been a fundamental tenet of criminal law, and it has long been recognized that the introduction of character evidence is antithetical to that goal.²

¹ *New York v Zackowitz*, 254 NY 192; 172 NE 466 (1930).

² See *id.* at 198, quoting Wigmore, *Evidenced*, vol. 1, § 194:

The natural and inevitable tendency of the tribunal—whether judge or jury—is to give excessive weight to the vicious record of crime thus exhibited, and either to allow it to bear too strongly on the present charge, or to take the proof of it as justifying a condemnation irrespective of guilt of the present charge.

In that case, Justice Cardozo noted that

Almost at the opening of the trial the People began to load the defendant down with the burden of an evil character. He was to be put before the jury as a man of murderous disposition. To that end they were allowed to prove that at the time of the encounter and at that of his arrest he had in his apartment, kept there in a radio box, three pistols and a tear-gas gun. There was no claim that he had brought these weapons out at the time of the affray, no claim that with any of them he had discharged the fatal shot. He could not have done so, for they were all of different calibre.^[3]

The prosecution in this case similarly “laid before the jury” weapons found in defendant’s home, all of which had been eliminated as the weapon used in the current shooting.

The end to be served by laying the weapons before the jury was . . . to bring persuasion that here was a man of vicious and dangerous propensities, who because of those propensities was more likely to kill.^[4]

* * *

If a murderous propensity may be proved against a defendant as one of the tokens of his guilt, a rule of criminal evidence, long believed to be of fundamental importance for the protection of the innocent, must first be declared away. Fundamental hitherto has been the rule that character is never an issue in a criminal prosecution unless the defendant chooses to make it one.^[5]

In this case, defendant did not take the stand or introduce any witnesses to establish his character as an issue in this case.⁶ Accordingly, the introduction of this highly prejudicial character evidence was clear error. In light of the complainant’s identification of defendant and the presence of gunshot residue on defendant’s hands and face, however, I agree that reversal is unnecessary in this case.⁷

/s/ Jessica R. Cooper

³ *Id.* at 195-196.

⁴ *Id.* at 196.

⁵ *Id.* at 197.

⁶ See *id.*

⁷ See *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).