

STATE OF WISCONSIN,

Plaintiff,

Case No. 2006CF005847

v.

RAYMOND HOGAN,

Defendant.

MOTION FOR PRELIMINARY RULING ON ADMISSIBILITY OF EVIDENCE OF THE
VICTIM'S VIOLENT CHARACTER

NOW COMES the above-named defendant, by his attorney, Jeffrey W. Jensen, and pursuant to Sec. 901.04, STATS., hereby moves the court for a preliminary ruling on the admissibility of the following evidence of the alleged victim's violent character:

1. If the defendant, Raymond Hogan, Jr., testifies at trial he is prepared to testify that he feared that his father was about to attack him and that he (Raymond, Jr.) feared for his safety and believed that deadly force was necessary to repel the attack. To establish that this belief was reasonable Raymond, Jr. would testify that he was aware of the following facts about his father:

A. That his father frequently carried guns;

B. That Raymond, Jr., on July 14, 1996 had witnessed his father shoot his (Raymond, Jr.'s) mother (Joe Ann Hogan) with a shotgun. Hogan, Sr., was convicted of that shooting.

C. That Raymond, Sr., is very violent when he has been drinking and on numerous occasions Raymond, Jr. has witnessed Raymond, Sr. beating his children (including Raymond, Jr.)

2. Additionally, in order to establish the credibility of Raymond Hogan, Jr.'s testimony in this regard, the defendant intends to call other witnesses who are aware of Raymond Hogan, Sr.'s violent tendencies and specific violent acts. Specifically:

A. Jeanifer Rochelle: Will testify that on June 7, 1998 she was at her mother's house at 2536 N. 1st St. and she had words with Raymond Hogan, Sr. and that after she went home Hogan showed up at her house and punched her with his fist;

B. Dextrick Greer: Will testify that Raymond Hogan, Sr. is intolerant of anyone who disagrees with him and he is a drug user and mean drunk. Dextrick has seen Hogan punch younger members of the family (see attached report)

C. Tracey Hogan: Will testify that Raymond Hogan, Sr. has a long history of domestic violence. He beat his children without good reason. Tracey knows that Hogan broke Joe Ann Hogan's arm with a baseball bat. (see attached report)

3. Finally, to permit the defendant to cross-examine Raymond Hogan, Sr., about his specific violent acts during the State's case-in-chief.

This motion is further based upon the attached Memorandum of Law.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2007.

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY RULING

INTRODUCTION

Evidence will be presented at trial that on October 26, 2006, the defendant, Raymond Hogan, Jr. (for sake of clarity Hogan will be referred to as "Junior") was at the home of his aunt. There were numerous other family members present including Dextrick Greer. Junior's father, Raymond Hogan, Sr. ("Senior") then arrived at the house with his new girlfriend. Junior could tell that Senior had been drinking and was possibly under the influence of alcohol. While in the living room Senior started an argument with Dextrick Greer. Junior went into the kitchen to avoid the conflict.

After a moment Senior came into the kitchen and was being physically aggressive to Junior. This led Junior to believe that Senior was armed because Junior is physically much larger. Senior lunged at Junior and, in the scuffle, Senior was shot in the face by Junior.

Junior will testify that he feared that he was in imminent danger of death or great bodily harm by his father and, therefore, he was required to defend himself. To corroborate that this belief was reasonable, Junior will testify that Senior has a violent temper, especially when he is drinking, and frequently is physically violent with little or no provocation. Junior knows that Senior is almost always armed with a gun and, specifically, that Senior was behaving that day as though he was armed. Junior witnessed Senior shoot Junior's mother, Joe Ann Hogan.

As will be set forth in more detail below, a sufficient basis for self-defense will be established. Therefore, Junior seeks to introduce evidence of Senior's violent tendencies. To corroborate Junior's otherwise self-serving testimony, Junior proposes to cross-examine Senior about these prior violent acts and, also, to present independent witnesses to the violent acts.

ARGUMENT

I. RAYMOND HOGAN, JR.'S KNOWLEDGE OF THE VIOLENT TENDENCIES OF HIS FATHER IS RELEVANT TO THE REASONABLENESS OF JR.'S BELIEF THAT HE WAS ABOUT TO BE ATTACKED.

In, *McMorris v. State*, 58 Wis. 2d 144, 149-150 (Wis. 1973), the Supreme Court made clear that:

We are of the opinion the better rule is that of those jurisdictions which hold that where there is a sufficient factual basis to raise the issue of self-defense, and the turbulent and violent character of the victim is an essential element of the defense, proof should be admitted as to both the reputation of the victim and the defendant's personal knowledge of prior relevant conduct of the victim.

Additionally, the Supreme Court recognized that the defendant's testimony of the victim's violent past can appear to be quite self-serving. Thus, the Supreme Court held that corroborating evidence of the victim's violent tendencies may also be presented. The court wrote:

Evidence corroborating the defendant's self-serving testimony on the only issue in the case, the defendant's state of mind, would be highly persuasive to the fact finder. The mere fact that the state does not contest the defendant's testimony about the victim does not obviate the defendant's need to bolster his own testimony with testimony of other witnesses, especially that of the victim himself. As McAllister makes clear, the defendant should not be limited merely to his own assertion but should be allowed to produce supporting evidence to prove the reality of the particular acts of which he claims knowledge.

State v. Daniels, 160 Wis. 2d 85, 104 (Wis. 1991).

Here, the ingredients for Senior to behave in an extremely violent manner were all present. He had been drinking. He had been arguing with a relative, Dextrick Greer. He was behaving in an aggressive, physically violent manner toward Junior.

Thus, the court should preliminarily rule that the evidence is relevant. Junior should be permitted to testify concerning his knowledge of Senior's violent tendencies including the fact that Senior shot Joe Ann Hogan. Moreover, Junior should be permitted to cross-examine Senior about these matters. Finally, Junior should be permitted to call witnesses to corroborate Junior's testimony concerning Senior's violent tendencies.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2007.

LAW OFFICES OF JEFFREY W. JENSEN
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