

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2021-019-004531
[2022] NZDC 8673**

THE QUEEN

v

COREY CHAPMAN

Date of Ruling: 13 May 2022

Appearances: A Alcock for the Crown
G Walsh for the Defendant

Judgment: 13 May 2022

RULING OF JUDGE J C DOWN

[1] Mr Chapman is charged with wounding with intent to cause grievous bodily harm, wounding with intent to injure as an alternative, and threaten to kill.

[2] The Crown seeks to lead a previous conviction at trial, for wounding with intent to injure, entered on 23 December 2009 in Christchurch.

[3] There is no suggestion that the proposed propensity evidence does not fit the broad and general definition of propensity in s 40. The Court's focus now needs to be on s 43, the particular rules that apply when the prosecution wishes to offer evidence of propensity against a defendant.

[4] The current offending can be summarised as follows; the defendant and the complainant are known to each other through the defendant's sister. The defendant arrived at the complainant's address seeking to confront him about an altercation that occurred between him and the defendant's brother approximately a month prior.

[5] There was a conversation between the two of them. The complainant explained to the defendant that he had resolved the matter with his brother. He asked the defendant if they were all good. He put out his hand to shake the defendant's hand. The defendant is alleged to have grabbed the complainant's hand, pulled him towards him and at the same time withdrew a knife with his other hand and stabbed him in the abdomen. He uttered words to the effect: "You touch my brother again and I'll kill you," followed up by: "Don't you snitch."

[6] He backed away from the complainant. There was no other discussion. The complainant subsequently realised that he had not just been punched in the stomach but had been stabbed. Some surgery was required to repair a laceration to his intestines.

[7] The proposed propensity evidence arises from proven offending on 6 June 2009. On that occasion the defendant went to an address in Christchurch where a party was being held. Shortly afterwards, the occupants of the address told him to leave. A number of party goers decided to follow him out to make sure that he left.

[8] There was a verbal altercation outside between the defendant and that group of people. There was one particular person close to him, the defendant struck him once in the abdomen using a punching motion. The complainant initially did not understand that he had been stabbed, however that became obvious.

[9] On that occasion the defendant stepped back from the victim and made it known to all that were there that he had a knife. Presumably he was simply warning them not to get involved with him, and by that method facilitated his escape.

[10] The victim was subsequently taken to hospital. He suffered serious injuries which required surgery.

[11] Section 43 of the Act is of particular importance in this application, and I quote the first part:

The Prosecution may offer propensity evidence about a defendant in a criminal proceeding only if the evidence has a probative value in relation to an issue in dispute in the proceeding which outweighs the risk that the evidence may have an unfairly prejudicial effect on the defendant.

[12] In the rest of the section there is guidance as to what factors the Court should take into account and some assistance with the test of probative value versus prejudicial effect.

[13] The rationale behind propensity evidence are the concepts of linkage and coincidence. In this case linkage is not present in terms of time because there is a 12 year gap between the propensity offending in 2009 and these allegations. The Crown argues that coincidence reasoning would allow the Court to admit this evidence to support its case. There must be some specificity about the conduct in order for that evidence to be probative. There are a number of factors that the Crown rely on to say that there are several similarities which support coincidence reasoning and go in favour of this evidence being admitted.

[14] To make a judgment about the prejudicial effect of admitting such evidence, s 43 sets out the following for consideration:

- (a) Whether the evidence is likely to unfairly predispose the fact finder against the defendant, and,
- (b) Whether the fact finder will tend to give disproportionate weight in reaching a verdict to evidence of other acts or omissions.

[15] It is important to state the obvious, which is that probative evidence against any defendant will also be prejudicial to that defendant. The question is whether it is unfairly prejudicial.

[16] The issue in dispute for trial is whether the defendant was involved in this offending. Mr Walsh expresses it in his written submissions as a denial of wrong-

doing. Indirectly of course such evidence would tend to support the credibility of the complainant in the present charges, as it would have a tendency to show a pattern of behaviour, or the modus operandi of this defendant.

[17] The bare facts that the defendant has previously used a knife in broadly similar circumstances is, in my view, highly probative evidence. The only question for me is whether that is unfairly prejudicial. In other words, will the jury rely too much upon the previous conviction, rather than upon the facts of the current offending; will they be unfairly predisposed against the defendant. In other words, will they act upon a general prejudice against the defendant and his conduct rather than looking carefully at the facts of the case, and whether the prosecution has proved its case beyond reasonable doubt?

[18] The similarities here are quite compelling in my view. On both occasions there was a confrontation brought about by the defendant's behaviour. The first one in time, the propensity incident in 2009, going to an address where he quickly became unwelcome and being told to leave. In the present offending him going to a house of the complainant intending a confrontation. Secondly, being armed with a knife being concealed upon his person, and thirdly, in both cases the presentation of that knife in a concealed and secretive fashion, without warning, such that both victims initially believed they had simply been punched hard to the stomach.

[19] There is of course in the proposed propensity evidence the additional feature of him waving the knife around saying: "I've got a knife." Although that is absent from the present offending, the circumstances were slightly different. In that case there was a group of people that would have been an immediate threat to him, having punched one of their number. That is not the case with the current charges. He simply confronted the victim, stabbed him, and then walked away.

[20] The question for me is, are there such similarities that a jury could say that this is the way that Mr Chapman behaves; that he has a propensity to behave in this way? Is there enough for a jury to find that there is a pattern to his conduct that helps them determine if he behaved in a similar way on this new occasion?

[21] I have concluded that there is. There is a pattern of offending which is remarkably similar as between the two incidents, a confrontation, a surreptitious use of the knife without warning, and indeed the arming and concealing of a knife beforehand.

[22] The jury will be directed by the trial judge as to the way that they can use the propensity evidence and they will be warned against improper use. In particular, the first thing they will be asked to do is to decide whether they agree that there are such similarities between the two sets of events that establish a pattern that they can rely upon. If they are not satisfied that there is a pattern, they will simply put the propensity evidence to one side, because it will not assist them.

[23] Turning to s 43(4), will that direction be sufficient to deal with these two specific concerns:

- (a) Firstly, whether the evidence is likely to unfairly predispose the fact finder against the defendant. In this regard, in a strange sort of way, the passage of time may make that concern less likely. If the offending were close in time then a jury might conclude: "this is how Mr Chapman behaves currently." Whereas the fact that it is 11 years old may allow them some perspective, granted by the passage of time, to look more closely at the modus operandi, the pattern of the way Mr Chapman behaves. I am not concerned that this propensity evidence will unfairly predispose them against him, and they will be warned specifically not to do that;
- (b) Secondly, whether the fact finder will tend to give disproportionate weight in reaching a verdict to the evidence of that other act.

[24] I conclude that they are unlikely to give disproportionate weight to it; they will be given a direction that will help them to keep it in proportion, to not be overly swayed by it, and how to use it properly.

[25] In those circumstances I have come to the conclusion that the proposed propensity evidence is legitimately prejudicial. In other words, it is more probative than it is prejudicial.

[26] The evidence is admissible.

Judge JC Down

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 18/05/2022