Name

Institution

Course

Date

The Legal Brief

**Introduction**

In general, when any given witness, including a defendant included, testifies, his or her credibility becomes an issue. The judge or jury is obligated to decide whether and how far to believe the witness. It is on this basis that the court can allow into evidence particular type of past convictions to helping it in determining the honesty of the witness[[1]](#footnote-1). In the case at hand, long included an appeal to good character as part of his defence, lifting a lid on the use of bad character evidence by the prosecution team. The prosecution is seeking to use his previous convictions to prove that he is not of good character as he has asserted, which raises the issue of admissibility of such evidence. The admissibility of previous convictions is contestable on the grounds that the court has to weigh the value of the evidence of previous convictions, looking at each case by case, in assisting the court determines the defendant's character and honesty[[2]](#footnote-2). The court ought to also take into account the possibility of such evidence creating the impression that the defendant is guilty before the trial is even concluded.

**Statement of Facts**

The defendant, Jason Long, is charged with the murder of Michael Short, in Middletown, on Saturday, 10th January 2021. The deceased‘s body was found on Ash Street, off High Road, near the football stadium, by the attending paramedics. The post mortem on his body revealed that the likely cause of death was a stab wound to the victim's leg and the resultant loss of blood. There were also signs of bruising and other bodily injuries consistent with repeated blows by hands and booted feet. It is thought that the time of death was approximately 4.30 pm.

The defendant has engaged in crime before, in which two previous convictions: one for assault occasioning actual bodily harm (s47 *Offences against the Person Act 1861*) from 12 years previously, and the other for harassment, under s4 of the *Protection from Harassment Act 1997*, from 3 years ago. This conviction related to threats of violence made to a Middletown United football supporter, and long was sentenced to 6 months imprisonment for this conviction. Since being released from prison at the end of his sentence for harassment, the accused has been working for a charity organization involved in renovating furniture for previously homeless people who have been provided with accommodation. Long also set up a support group for ex-prisoners which has had a positive impact on re-offending rates in the local area.

Section 99(2) of the *Criminal Justice Act 2003* allows for proof of a person’s bad character by the calling of evidence as to his reputation, which may include citing of previous convictions. The defendant lifted the lid, allowing interrogation of his character when he appealed to good character as part of his defence.

**Issue**

The issues of interest to the court that arise from the requested evidence include:

**Relevance**

The evidence of bad character must be relevant to the case at hand before it can be admitted in court. The defence must prove that the evidence sought is relevant to facts adduced in the case at hand[[3]](#footnote-3). The evidence of bad character arising from previous convictions is admissible in court. However, this is only if it meets the test for relevance. In *Miller v Regina (2010),* the court noted that for the character of a person to be cross-examined, his or her credibility must be a considerable issue in the trial, and that bad character must have substantial probative value in relation to the issue of that credibility. The court went on to say, ‘evidence of bad character is not confined to proof of previous convictions, but whether or not the evidence relied upon comprises convictions or previous conduct otherwise proved, it must pass the section 100(1) test of being (1) important explanatory evidence or (2) of substantial probative value on an issue of substantial importance. The purpose of section 100 in the present context is to limit the ambit of cross-examination to that which is substantially probative on the issue of credibility if credibility is an issue of substantial importance in the case[[4]](#footnote-4). The court has to consider the relevance of the previous convictions to the current case.

**Defendant Conduct after the Earlier Convictions**

In determining whether to admit previous convictions as evidence of bad character, the court has to consider the conduct of the defendant after the last conviction. The defendant has shown a drastic change in his conduct after completing his last sentence. He has been working for a charity involved in renovating furniture for previously homeless people who have been provided with accommodation. He has also set up a support group for ex-prisoners which has had a positive impact on re-offending rates in the local area. It is worth noting that as a person supporting ex-prisoners to lead a healthy life and avoid crime, Long is inclined to serve as a role model to others. As such, it would be hard for him to engage in crime again when he knows it counts a lot to his reputation and current work.

**The Centrality of the Defendant’s Credibility to the Current Case**

The centrality of the defendant's character in the current case is not an important issue; it is peripheral. In a criminal case, serious as murder, the prosecution must prove beyond reasonable doubt the offender was responsible. One cannot be deemed to be a murder by looking at his or her character, and neither is credibility issue enough to prove that he was in the area where the crime was committed as alleged by the prosecution. The prosecution ought to prove beyond reasonable doubt that the defendant was at the crime scene and if true he was there; he committed the crime[[5]](#footnote-5). In this respect, there is no reasonable ground to believe that the admission of bad character evidence is central to the case at hand, hence irrelevant.

**Similar Factor Evidence**

The previous convictions and the current case ought to meet the similar factor evidence for it to be relevant and subsequently admissible. The current case includes murder, something that is not the same as a threat to use violence of event assault crime. Even where a correlation is found, the type of threat and nature of assault would be considered to determine if the previous convictions and current murder cases are related to warrant the admission. In the murder case, there was an element of stabbing, which does not relate to convictions for the threat of violence, harassment, or assault. The previous conviction speaks to a wide range of crimes that my client committed, none of which speaks about murder, attempted murder, or stabbing. It would have made some sense if the previous convictions involved murder, stabbing, or attempted murder to try and draw inferences that can help in determining the murder case[[6]](#footnote-6).

**Admissibility**

The evidence of the defendant’s bad character allows the prosecution to introduce previous convictions and misconduct to advance its line of argument. However, although section 101(1) of the Criminal Justice Act 2003 gives the prosecution the liberty to introduce the accused's previous convictions to firm its case, such as move is subject to meeting the admissibility test. There are two major stages of testing the admissibility of bad character evidence in a criminal trial. One, it must meet at least one of the seven gateways through which previous convictions can be admitted in criminal proceedings, of which one only needs to satisfy at least one. Subsection 1 of the ACT provides that: in criminal proceedings, evidence of the defendant's bad character is admissible if, but only if it meets at least one of the following:

1. all parties to the proceedings agree to the evidence being admissible,
2. the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
3. it is important explanatory evidence,
4. it is relevant to an important matter in issue between the defendant and the prosecution,
5. it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
6. it is evidence to correct a false impression given by the defendant, or
7. the defendant has made an attack on another person’s character[[7]](#footnote-7).

Secondly, the evidence of bad character, if it meets the demands of any of the gateways, ought not to be admitted if it has such an adverse effect on the fairness of the trial. The accused is entitled to a fair and just trial, a major principle in the administration of justice. Where there exist reasonable grounds to believe that the introduction of particular evidence will affect the fairness of the trial, the evidence is inadmissible[[8]](#footnote-8).

**Prejudicial**

The evidence about the accused's previous convictions accounts to prejudice; it creates an impression that he is already guilty because of his previous criminal records. Admitting this evidence would mean that the accused starts the trial from the point of guiltiness. In a nutshell, he will be battling to affirm that he is not guilty and a bad person. In the long run, this will have an adverse effect on the outcomes of the trial. In *Regina v Major Sandhu (1996)*, the court of appeal held that evidence that went to prove elements beyond the necessary elements of the offence and which was prejudicial was not inadmissible. The use of previous cases by the prosecution does not seek to prove that my client committed the crime but to advance a prejudicial judgement of his character. The matter at hand is about the murder of Michael Short, which has nothing to do with my client's previous records. My client has no history of killing or attempting to murder anyone for the previous cases to be of relevance to the trial.

In the case of *R v Hanson [2005]*, the Court of Appeal noted that evidence of bad character could not be relied upon to simply to strengthen a weak case or to propagate the bias of the minds of a jury against a defendant. It is clear that in the case at hand, the prosecution wants to rely on evidence of bad character to try and profile the defendant as a bad person who could have committed the murder even when there is no forensic evidence or eyewitness to confirm the same. Consequently, it will be prejudicial for the court to allow admission of past prosecution to firm an already weak case.

**The Appropriate Warnings Or Directions**

It is important to note that even in cases where there are previous convictions, as it is in this case, one can still be considered to be of 'effective good character' on several grounds: one, where the previous convictions are outdated, irrelevant, or both. The conviction for assault occasioning actual bodily harm under s47 of the *Offences Against the Person Act 1861* is 12 years old, long enough to qualify to be termed as outdated. 12 years is a very long period of time, long enough to have a teenager grow into an adult and change behaviour. It is evident that as people grow old, they tend to be more considerate of what they do and how they behave. On the ground of the age of the conviction, I am persuaded, and I hope the court can also be persuaded, that the conviction is outdated, hence ought to be set aside for the purposes of the jury.

There is no evidence to show that my client murdered Michael Short; the introduction of previous evidence only seeks to create a notion that since he was involved in crimes before, he is the murderer. This would amount to prejudice, prejudgment, and partiality in trying the crime. My client deserves a just and fair trial, which is not achievable with the admission of prejudicial evidence in the case. If admitted, the evidence of previous convictions would be limited to proving that my client is of a bad character and not responsible for the crime at hand.

The evidence of bad character sought should have a clear connection to the facts about the case in question, in this case, the murder of Long. As captured in *R v McNeill [2007]*: “the words of the statute ‘has to do with’ are words of prima facie broad application, albeit constituting a phrase that has to be construed in the overall context of the bad character provisions of the 2003 Act. It would be a sufficient working model of these words if one said that they either clearly encompass evidence relating to the alleged facts of an offence which would have been admissible under the common law outside the context of the bad character of propensity, even before the Act, or alternatively as embracing anything directly relevant to the offence charged, provided at any rate they were reasonably contemporaneous with and closely associated with its alleged facts.” The connection ought to be clearly determined before the evidence call is allowed in court. The previous offenses must have an element of killing or attempt to kill as it would be relevant for the trial of a murder case.

According to section 98 of the Criminal Justice Act 2003, evidence of ‘Bad character” are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which—

(a). Has to do with the alleged facts of the offence with which the defendant is charged, or

(b). Is evidence of misconduct in connection with the investigation or prosecution of that offence.

It is true that Long was killed, but there is no fact to link the defendant to the scene of the crime. According to the defendant, he was at home at the alleged time the crime was committed. The CCTV footage that is relied on to try and place him within the scene of crime shows a person who is alleged to be him but has not been confirmed to be him. The electronic evidence should be subjected to a relevant test to determine its authenticity and reliability. If the CCTV evidence cannot pass the test, then placing the suspect in an area of crime will become hard. Secondly, even in the event of the electronic evidence admissibility, it must be proved beyond reasonable doubt that it is my client who is captured on the CCTV footage. This has not been proven, hence too early to introduce evidence of bad character as a way of trying to prove the defendant’s capability.

Moreover, even in the event that it is affirmed that it is my client who was captured on the CCTV footage, this will not be enough to place him at the scene of the crime and to confirm that he is the one who killed Short. Nowhere has the CCTV footage captured the deceased being killed nor indicated that the alleged suspect on the footage was together with the deceased. In this respect, without a clear connection between the suspect and the alleged crime, it would be unfair to admit a previous conviction as a way of affirming the suspect’s bad character and responsibility for the crime committed.

**Conclusion**

The admission of evidence of bad character as requested by the defence side will be prejudicial to the defendant, and the evidence sought is also of not substantial relevance to the case at hand. The evidence of bad character is also pursued by the defence for the simple purpose of strengthening an already weak case. The previous convictions are not relevant to proving that the defendant was at the scene of the crime nor that he committed the murder of Short. The relevance of the previous convictions to the current case is also questionable because the offences are not similar.

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4. Miller v REGINA [2010] EWCA Crim 1153 [↑](#footnote-ref-4)
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6. Emma Smith and Michael Stockdale, 'Bad Character Evidence As Evidence Of Identity' (2015) 79 The Journal of Criminal Law. [↑](#footnote-ref-6)
7. s.101 Criminal Justice Act 2003 [↑](#footnote-ref-7)
8. R v Richardson [2014] EWCA Crim 1785. [↑](#footnote-ref-8)