State v. Tackett, 8 N.C. 210 (1820)

It is competent for one charged with the murder of a slave to give in evidence that the deceased was turbulent; that he was insolent and impudent to white persons.

The whole design of the act of 1817, "to punish the offence of killing a slave," was to make the homicide of a slave extenuated by a legal provocation, manslaughter, and to punish it as such; it does not go further and determine the degrees of the homicide, but leaves them to be ascertained by the Common Law.

At Common Law, and between white persons, a slight blow will not excuse a homicide--for that must be on mere necessity.

Nor will words extenuate it to manslaughter. But it is not correct to say, "that a slight blow not threatening death or great bodily harm will not extenuate, if the weapon used by the slayer be a deadly one;" because that authorises the inference, that a blow to constitute a legal provocation, must threaten death.

The true principle of the law is, that if he, on whom an assault is made with violence or circumstances of indignity, resent it immediately by killing the aggresssor, and act therein in heat of blood and under that provocation, it is but manslaughter.

The general rule should therefore be laid down, " that words are not, but blows are a sufficient provocation to lessen the crime of homicide to manslaughter. " From this, there are a few cases which appear to be exceptions--but they depend on very particular circumstances.

But it exists in the very nature of slavery, that the relation between a white and a slave is different from that between free persons; and therefore, many acts will extenuate the homicide of a slave, which would not constitute a legal provocation of done by a white person.

This was an indictment for the murder of Daniel, a slave; and on the trial, the evidence was, that the deceased had a free colored woman for a wife who lived on the lot of one Richardson, a carpenter, in Raleigh, and in a house near to that in which Richardson himself lived: that the deceased was generally there of nights: that the prisoner was a journeyman in the employment of Richardson, and lived in the house with him: that on the night when the deceased was shot, he, Richardson, had gone to sleep and was awaked by the firing of a gun, and soon after heard some person come into the room and set something down like a gun, where his generally stood, and that he then turned over, and saw a person going out, whom he thought to be the prisoner, and that in a short time, he heard groans and complaints out of doors, as of one injured: that his gun had a buck-load in it, and his family had been admonished not to use it: that Richardson saw no more of the prisoner that night, and that he did not sleep at home: that about a week or ten days before, the prisoner told Richardson of a fight between himself and the deceased on that day, and said that he would kill him; but the prisoner was drunk when he said so. In consequence of this threat, and of the rumour and belief that the prisoner kept the deceased's wife, Richardson discharged him; but took him back again in a few days, upon his promise to behave better, It was proved by other witnesses, that the prisoner went to a house in the suburbs of the city about 9

o'clock of that night, to which he had before promised to go: that soon after he went in, he said several times " that he was uneasy," and, upon his being asked why, he said that he had been down town and got into an affray, and was afraid the constables would have hold of him: that soon afterwards, he said that he had shot a man, a black man belonging to Mr. Ruffin, and that he believed that he spattered him well, for he took good sight at his legs and thighs, and the fellow hollowed. The prisoner then gave this account of the affair to the witnesses: that he had that night (which was very dark) been down town and was returning home the back way through the lot, and found the deceased lying on his belly on the ground at the window of the house in which the prisoner slept; and the prisoner said that he would then have blown out his brains, if he had had a pistol: that he asked the deceased who he was and what he was doing there, to which the deceased replied only by asking who he was and what he was doing there: that the deceased then got up and told him that Richardson was not at home, and they then went into the yard together, where they remained a short while, and the prisoner went into the house, took Richardson's gun, and returned and shot the deceased, while he was dodging around the turning lathe. The prisoner did not appear to be drunk, and asked permission to stay all night, and went to bed and seemed to be asleep when the Constables came to arrest him: upon being taken, he remarked, without any previous communication of the charge against him, that it was hard to go out of a good warm bed to jail. In a short time after the deceased was wounded, some of the neighbours, alarmed by his groans, came to him, and a surgeon was sent for, who examined his body, and found a very large mortal gunshot wound in the front and lower part of the abdomen. It was also proved, that two or three weeks before the homicide, the deceased had said to a witness that the prisoner kept his wife, and shewed a large stick with which he said that he had given the prisoner a beating; and that if the prisoner did not let his wife alone, he would kill him; and that on another night, about a week or ten days before the homicide, the deceased was seen standing at Richardson's gate, and, upon being asked "who he was," said that he was not afraid to tell his name, that he was Daniel, and that the devil had been to pay there; that Richardson had whipped him and driven him off his lot; but he would be the death of Richardson or Tackett one. Another witness, who also was a carpenter, and worked in Richardson's shop, further proved, that about ten days before the deceased came to his death, he came up to a work-bench where Tackett was working in the street very near to Richardson's house; that the prisoner ordered him off, and the deceased said he was in the street and would not go: a fight then took place between them, but the witness did not see and could not tell how it began: when the witness took notice of them, the deceased had the stile of a window sash in his hand, and he struck the prisoner several times with it, and at one of the blows burt his eye; and the deceased also caught hold of the adze which the prisoner took up to strike him with; they scuffled for it, the deceased butted the prisoner and finally succeeded in getting the adze from him, and carried it off. This witness also stated, that very early in the morning of the next day or the day after, he found the deceased lying in wait in Richardson's garden with two stones in his hands, and the deceased said that he thought the witness had been Tackett, and he had intended to knock his brains out: that after dinner of the day of the homicide, he saw the deceased down town, and was asked by him, where Tackett was; and the deceased then said, that he did not intend that Tackett and Lotty (the deceased's wife) should out-do him; that she had behaved so meanly that he would not have her, but that the prisoner should not take her away from him; and that if he did not let her alone, he would kill Tackett or Tackett should kill him.

The prisoner then offered to prove, that the deceased was a turbulent man, and that he was insolent and impudent to white people: but the Court refused to hear such testimony, unless it would prove that the deceased was insolent and impudent to the prisoner in particular.

In the charge to the Jury, the Court instructed them, that under the act of 1817, this case was to be determined by the same rules and principles of law as if the deceased had been a white man: that murder was the felonious killing of a human being, with malice aforethought, which might either be express, as by declarations or lying in wait, or implied, as from the instrument used: that no words would justify or extenuate homicide, and make it less than murder: that by the Common Law, a slight blow, if it did not threaten death or great bodily harm, would not excuse or extenuate, if the instrument used be a deadly one, as a loaded gun or the like; and that it was of no consequence, at what part of the body the aim was directed, if death or great bodily harm were intended.

The Jury found the prisoner guilty of murder: a motion was made for a new trial, because proper evidence had been rejected; and because the Court erred in the charge to the Jury: but it was refused, and sentence of death was pronounced upon the prisoner, who appealed therefrom to this Court.

The case was argued by Seawell, for the prisoner, and by the Attorney-General for the State.

Seawell contended, that the act of 1817 had no other effect than to make the unlawful killing of a slave, without malice prepense, felonious and punishable--in other words, to create the offence of manslaughter, as applied to the homicide of slaves. Before that act, the killing a slave was either murder or nothing; at least such was the prevailing opinion, and great doubts existed on the Bench, as well as with the ablest Lawyers at the Bar. The act was intended to settle that question merely. But it does not pretend to define what shall constitute the slaying of a slave manslaughter: it leaves that to be determined by the Judges, under the ordinary rules of law: and while the Common Law lays down general rules, by which we are to ascertain whether the killing of one man by another, between whom there is no relation, and who stand on an equality with each other, be murder or manslaughter, or neither, and lays down different rules to govern cases in which the deceased stand in particular relations of dependence and inferiority to the slayer, as an apprentice, servant, pupil, sailor or soldier, to his master, tutor, or officer. So here, where the wide distinction exists in the grades of our society between freemen and slaves--whites and blacks; and where the policy of the Law as well as the inveterate habits of our population, and the best feelings of our nature enjoin it upon us to keep these classes as distinct in every respect as possible, and, to that end, to enforce the superiority of the one, and the subordination due from the other, a new rule must be laid down fitted to this state of things, and adapted to this particular relation and the exigency of our situation. A free man, who hath been taught from his infancy to look for humility and obedience in a slave, and who feels every moment of his life the vast superiority that he has over him, early learns that tamely to submit to words of reproach from a slave is degrading to the last degree, and that a blow, even the slightest, is the greatest dishonor. At such an insult, therefore, his passions are inflamed to the utmost pitch; and if, in such a state, he slay the offender, he has a right to claim the benefit of that rule which regards mercifully the frailty and infirmity of human nature. If any precise rule could be laid down, I would say that a word from a slave was a provocation equal to a blow from a free man; and the

most trifling assault, to a deadly stroke. There is, in the very nature of things, an essential difference between the cases of slaves and free men; and the Court cannot disregard it, arising as it does, out of our population, laws, education, and habits.

But, at all events, the Judge erred in saying that a blow, unless it threatened death or great bodily harm, would not extenuate, if the instrument used was a deadly one-- Maugridge's case, Kelyng, 135.

The Attorney-General insisted upon the words of the act of 1817, which are, "that the killing of a slave shall partake of the same degree of guilt, when accompanied with the like circumstances, that homicide now does." The Common Law declares what circumstances shall make one guilty of that degree of homicide called manslaughter, or of that higher degree called murder. These were well ascertained before the statute; and that statute declares, in express terms, that the same circumstances that would constitute the slaying of a white man murder, shall likewise constitute the killing of a slave murder. But there is no feature of manslaughter in this case; and the prisoner is guilty of murder, and may be punished therefor under the acts of 1791, and 1801, without the aid of that of 1817. The evidence offered was clearly inadmissible; for no words will justify an assault, much less a deliberate shooting another down. There was no evidence that the deceased gave the prisoner any blow; but if he had given a slight blow, the charge was right.-- East's Cr. L. 234, 236-- Fost. 291--4 Bl. Com. 199.

TAYLOR, Chief-Justice, delivered the opinion of the Court:

After stating the points, he observed, that it does not appear from any direct proof in the case, what was the immediate provocation under which the homicide was committed. The evidence relative to that is altogether circumstantial and presumptive, and its weight and effect required the most-careful examination and deliberation of the Jury. The conclusion they might arrive at was all-important to the prisoner, since the degree of the homicide depended on it; and whether it was malicious, extenuated or excusable, must have been determined by them from such lights as they could gather from the facts actually proved, and such inferences as they might deduce from them. It cannot be doubted that the temper and disposition of the deceased, and his usual deportment towards white persons, might have an important bearing on this enquiry, and according to the aspect in which it was presented to the Jury, tend to direct their judgment as to the degree of provocation received by the prisoner. If the general behaviour of the deceased was marked with turbulence and insolence, it might, in connexion with the threats, quarrels and existing causes of resentment he had against the prisoner, increase the probability that the latter had acted under a strong and legal provocation. If, on the contrary, the behaviour of the deceased was usually mild and respectful towards white persons, nothing could be added by it to the force of the other circumstances. They must still depend upon their own weight and the probability be lessened, that the prisoner had received a provocation sufficient in point of law to extenuate the homicide. The evidence therefore ought to have been received; and this will be the more apparent when the charge to the Jury is considered.

The Court directed the Jury, that under the act of 1817, the case was to be determined by the same rules and principles of law as if the deceased had been a white man. The act referred to, had no design beyond that of authorising a conviction for manslaughter, in cases where a slave

was killed under a legal provocation. If, before that time, a white person had killed a slave under such circumstances as constituted murder, he might have been convicted and punished for that offence; but if the homicide was extenuated to manslaughter, no punishment was annexed to that offence, and the accused persons were uniformly acquitted. It seemed just to the Legislature, that the manslaughter of a slave should be punished in the same manner with that of a white person. This they have provided for, and it is all they intended to provide for. They did not mean to declare that homicide, where a slave is killed, could be only extenuated by such a provocation as would have the same effect where a white person was killed. The different degrees of homicide, they left to be ascertained by the Common Law of the country--a system which adapts itself to the habits, institutions and actual condition of the citizens, and which is not the result of the wisdom of any one man, or society of men, in any one age, but of the wisdom and experience of many ages of wise and discreet men. It exists in the nature of things, that where slavery prevails, the relation between a white man and a slave differs from that, which subsists between free persons; and every individual in the community feels and understands, that the homicide of a slave may be extenuated by acts, which would not produce a legal provocation if done by a white person. To define and limit these acts, would be impossible, but the sense and feelings of Jurors, and the grave discretion of Courts, can never be at a loss in estimating their force as they arise, and applying them to each particular case, with a due regard to the rights respectively belonging to the slave and white man--to the just claims of humanity, and to the supreme law, the safety of the citizens. An example may illustrate what is meant. It is a rule of law, that neither words of reproach, insulting gestures, nor a trespass against goods or land, are provocations sufficient to free the party killing from the guilt of murder, where he made use of a deadly weapon. But it can not be laid down as a rule, that some of these provocations, if offered by a slave, well known to be turbulent and disorderly, would not extenuate the killing, if it were instantly done under the heat of passion, and without circumstances of cruelty.

The charge of the Court proceeds to state, “that by the Common Law, a slight blow, if it did not threaten death or great bodily harm, would not excuse or extenuate, if the instrument used was a deadly one.” It does not appear from the case, that a blow of any kind was given by the deceased to the prisoner, or that any struggle immediately preceded the homicide; but as it was impossible for the Court to foresee what inferences might be drawn by the Jury from the testimony adduced and the circumstances proved, this part of the instruction was given them, that they might be enabled to estimate the provocation, in the event of their being satisfied that a blow was given. In such a case, the Jury might have been misled if the charge be incorrect: and I think it was so, because it lays down as a general rule, what is true only under peculiar circumstances, and in cases where a slight blow is cruelly revenged.

The first proposition, that such a blow will not excuse, is legally correct; for in order to reduce a homicide to excusable self-defence, it is incumbent upon the accused to prove, that he killed his adversary through mere necessity in order to avoid immediate death. It is manifest that such necessity never could be produced by such a blow as that described. But when the charge affirms, “that a slight blow, not threatening death or great bodily harm, will not extenuate a homicide, if the weapon be a deadly one,” it authorises the inference, that a blow, to constitute a legal provocation, must threaten death or great bodily harm. This, however, is no part of the description of a blow, which all the authorities hold sufficient to extenuate. For if it amount to a breach of the peace, and offer an indignity to the person receiving it, it is generally conceded,

that it will extenuate the homicide to manslaughter, although a deadly weapon be used. Accordingly, it is laid down by Hawkins, "if one man, upon angry words, shall make an assault upon another, either by pulling him by the nose, or filliping him upon the forehead, and he that is so assaulted draw his sword and immediately run the other through, that is but manslaughter." The same passage is quoted with approbation by Kelyng;[1] and I take the sound principle to be, that if any assault made with violence or circumstances of indignity upon a man's person, be resented immediately by the death of the aggressor, and he who is assaulted act in the heat of blood, and upon that provocation, it will be but manslaughter. When, therefore, a Court is called upon to pronounce the general rule, it should be that "words are not a sufficient provocation: but blows are a sufficient provocation to lessen the crime into manslaughter."[2] Some cases, however, have been attended with peculiar circumstances, shewing the necessity of a more critical and precise limitation of the rule. The first is Stedman's case, quoted in East's Crown Law.[3] In that case, the provocation first disclosed was a box on the ear given by a woman to a soldier: in return, he struck her on the breast with the pommel of his sword; and afterwards he pursued her and stabbed her in the back. Holt was of opinion that this was murder--a single box on the ear from a woman, not being a sufficient provocation to kill in this manner, after he had given a blow in return for the box on the ear. But it was afterwards held to be manslaughter, because it appeared that the woman struck with an iron patten, and drew a great deal of blood. The other case, is Rex v. Reason & Trauter;[4] upon which, as reported, Mr. Justice Foster calls it an extraordinary case, that all the circumstances of aggravation--two to one-- Mr. Luttrel helpless and on the ground, begging for mercy, stabbed in nine places, and then dispatched with a pistol--that all these circumstances, plain indications of a deadly revenge or diabolical fury, should not outweigh a slight stroke with a cane. These cases speak plainly for themselves, and do not amount even to an exception to the rule, but are evidently founded upon the protracted and unrelenting cruelty, with which the prisoners pursued their revenge out of all proportion to the provocation. But if in Stedman's case, he had instantly upon receiving the box on the ear, stabbed the woman; and the officer, in the other case, had stabbed Mr. Luttrel upon receiving the blow with the cane, the cases must have been pronounced to be manslaughter. Upon the whole of the case, therefore, I think the prisoner is entitled to a new trial.

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[1] 135.
[2] Taylor's case, 5 Bur. Rep. 2796.
[3] 234.
[4] 1 Strange 499.