Street Names and Nicknames

Author : Jeff Welty

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Suppose that a murder defendant goes by the street name "Hit Man." The prosecution wants the investigating officer to testify that she received a tip that "Hit Man" committed the crime, and that she knew that the defendant used the nickname "Hit Man." Defense counsel moves to prohibit all references to the nickname during the trial, arguing that it is *de facto* character evidence, which is generally prohibited under Rule 404(a), and that it is in any event far more prejudicial than probative and so barred under Rule 403. How should the judge rule?

Case law suggests that a brief reference to a defendant's unflattering street name is permissible. However, the officer and the prosecutor should not unduly emphasize the nickname.

North Carolina cases. Our appellate courts have decided several nickname cases, and in every case, the courts have ruled in favor of the state:

- In *State v. Bonnett*, 348 N.C. 417 (1998), the court ruled that a witness's references to defendant's nickname, "Homicide," were not prejudicial given that defense counsel and the defendant used the same term. In any event, the court stated, it is not error to refer to the defendant by the name by which he is generally known.
- In *State v. Swift*, 290 N.C. 383 (1976), the court said, "we do not believe it would have been error to refer to defendant by the name by which he was generally known [in this case, "Poison Ivy" or "Poison"]. The fact that his nickname may have been demeaning does not create error per se. Defendant had an opportunity to explain his nickname."
- In *State v. Riley*, 159 N.C. App. 546 (2003), the court concluded that an officer's reference to defendant's nickname, "Dirty," was not prejudicial in light of the overwhelming evidence of the defendant's guilt and so was not plain error.

These cases don't completely close the door to defense objections about nicknames. The nicknames in *Swift* and *Riley*, while unflattering, were not unambiguous references to criminal activity. The nickname at issue in *Bonnett* was much worse, but the defendant's appeal was undermined by the fact that defense counsel and the defendant used the name themselves.

National cases. Although the vast majority of decisions nationally have rejected appeals based on references to defendants' nicknames, a few cases have found the use of a defendant's nickname to be so prejudicial as to require a new trial. The leading case is *United States v. Farmer*, 583 F.3d 131 (2d Cir. 2009), where the Second Circuit condemned the prosecution's repeated references to the defendant's nickname, "Murder." The court distinguished other nickname cases in which no prejudicial error was found, noting that those cases generally involved less damning nicknames, fewer references to the nicknames, or limiting instructions regarding the nicknames. *See also Taylor v. State*, 23 A.2d 851 (Del. 2011) (awarding a new trial on other grounds to a murder defendant and recommending that "in the retrial, the court should make an effort to delete all references to [the defendant's nickname, "Murder"] if possible"). *But see Com. v. Williams*, 58 A.3d 795 (Pa. Super. 2012) (no error in allowing prosecutor and prosecution witnesses to refer to the defendant by his nickname, "Killa"; prosecution "did not use [the] nickname to suggest [the defendant] had a violent character, but used it to show that the witnesses recognized [him] . . . even though the witnesses did not know [his] real name"); *Burtts v. State*, 499 S.E.2d 326 (Ga. 1998) (no error where witnesses

identified the defendant as “Killer Corey” because they did not know his full name; “the use of a nickname does not place the character of an accused in issue”).

Practice pointers. The upshot for the prosecution is to exercise restraint. The more frequently a defendant’s nickname is used, the more closely it relates to criminal activity, and the more careful the defendant is to avoid using the nickname himself and to object when it is used by others, the more likely that the use of the nickname will be deemed improper. If a defendant’s nickname is likely to feature prominently in a trial, it would be wise to ask the judge to give a limiting instruction.

The defense should tread carefully, too. Sometimes the shoe is on the other foot and the defense wants to make the defendant’s nickname known to the jury. But that can carry unintended consequences, as in *State v. Berry*, 356 N.C. 490 (2002). In that case, a murder defendant elicited testimony that his nickname was “Crazy K,” “apparently in an attempt to tie the nickname to defendant’s purported lack of mental stability.” But that “gave the State the opportunity to establish the source of the nickname,” which was gang-related.