# EVIDENCE

## Proof of Other Crime

The defendant was convicted of the murder of one Jacob Wagner. The state claimed that the defendant had caused the death of Wagner by administering poison. During the trial of the case, over the objections of the defendant's counsel, the state introduced evidences of the deaths by poison of several other men, all of similar circumstances and who had been friends of the defendant. In *State* v. *Hahn*, 59 Ohio App. 178, 17 N.E. (2d) 392 (1938), the court held that the evidence was admissible, and the statute under which it was admitted was constitutional.

Ordinarily, evidence that the defendant has committed other crimes is not admissible to show that he committed the crime charged. While proof of other crimes would have some relevancy, there are dangers of confusing the jury and prejudicing the defendant in going into these collateral matters and of forcing the accused to defend all the alleged acts of his career. In *State* v. *Adams*, 20 Kan. 311 (1878), the general rule was well stated—"It is clear, that the commission of one offense cannot be proved on the trial of a party for another, merely for the purpose of inducing the jury to believe that he is guilty of the latter, because he committed the former."

But numerous exceptions have been engrafted upon the rule. In *People* v. *Molineux*, 168 N.Y. 264, 61 N.E. 286 (1901), it was said, "Evidence of other crimes is competent to prove the specific crime charged in the indictment, when it tends to establish (1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or plan, embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others, and (5) the identity of the person charged with the commission of the crime on trial." In such cases as receiving stolen goods, passing counterfeit money, and obtaining property under false pretenses, the exception has long been recognized. But proof of other crimes is not limited to such cases.

In *Rex* v. *Smith*, 11 Crim. App. 229 (1915), the defendant was convicted of the murder of a woman with whom he had gone through the forms of marriage, although he was married at the time. The victim, in this case, was found drowned in a bathtub. The prosecution was permitted to show that the defendant also married two other women, and that they both died in bathtubs under circumstances similar to those attending the death of the deceased. Another homicide case in which evidence of a previous crime was admitted was that of *Jenkins* v. *State*,

191 Ark. 625, 87 S.W. (2d) 78 (1935). In this case, the defendant was indicted for poisoning and killing her children. Evidence was admitted to show that she had attempted to poison her husband several weeks before the death of her children. A recent Pennsylvania case, *Commonwealth* v. *Chalfa*, 313 Pa. 175, 169 Atl. 564 (1933), involved an insurance fraud. Evidence was admitted of deaths by means of poison other than the specific one charged in the indictment.

The Ohio cases are clearly in line with the general rule and its exceptions. In *Whiteman* v. *State*, 119 Ohio St. 285, 164 N.E. 51 (1928), the defendants were indicted for robbery. Evidence of similar robberies was admitted by the court in sustaining the conviction of the lower court. The Supreme Court said, after reciting the general rule, "While the rule itself is fundamental and well settled by a long line of adjudication, it is equally fundamental and well settled that in certain classes of cases, collateral offenses may be shown, as where such collateral offenses have been executed according to a plan or method, and it is shown that the accused persons committed such other offenses, and in so doing followed the same plan or method as is shown to have been followed in the commission of the crime charged in the indictment." A conviction of larceny of an automobile was sustained in *Patterson* v. *State*, 96 Ohio St. 90, 117 N.E. 169 (1917), where the state relied for conviction upon proof of a criminal plan to steal various automobiles other than those charged in the indictment.

An Ohio statute, section 13444-19, now provides, "In any criminal case where the defendant's motives, intent, absence of mistake or accident on his part, any like act or other acts of the defendant which may tend to show motive, intent, the absence of mistake or accident on his part, or the defendant's scheme, plan or system of doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another or subsequent crime by the defendant." The statute was enacted in 1929. It has frequently been held that the statute is simply a reiteration of the common law, and so its constitutionality is beyond question. *State* v. *Smith*, 123 Ohio St. 237, 174 N.E. 768 (1931); *Russo* v. *State*, 126 Ohio St. 114, 184 N.E. 241 (1933); *Kornreich* v. *Industrial Fire Insurance Co.*, 132 Ohio St. 78, 5 N.E. (2d) 153 (1936). In recent decisions of the Supreme Court of Ohio where the statute was questioned, appeals were dismissed, the court holding that no debatable constitutional question was involved. *State* v. *Salupo, et al.*, 131 Ohio St. 370, 2 N.E. (2d) 865 (1936); *State* v. *Pleyer*, 131 Ohio St. 613, 3 N.E. (2d) 422 (1936).

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