

# Evidence - Proof of Present Crime by Evidence of Past Criminal Acts

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cited with approval in *Hill v. State*, 145 Ala. 58, 40 So. 654 (1906). See also *Mahoney v. State*, 203 Ind. 421, 180 N.E. 580 (1932). In *Turner v. State*, 1 Ohio St. 422 (1853), the defendant demanded money of the prosecuting witness and, as the wife was handing it over to the prosecuting witness, the defendant snatched it and pocketed it. This was held to be robbery since it is enough that the property was in the presence and under immediate control, and that the offended party was laboring under fear, and that the intent to rob was present. The property need not actually be severed from the person. *Cf. Ibeck v. State*, 112 Tex. Cr. 288, 16 S.W. (2d) 232 (1929), where it was held that one may be robbed of property not taken from his person. In a case where, because of threats and violence of the defendant, the complaining witness sent for her jewels, which were delivered through her maid to the defendant, it was held that this constituted robbery since it is enough if the property is taken from the complaining witness' control and protection, and that by violence or putting in fear she was compelled to surrender it. *Com. v. Homer*, 235 Mass 526, 127 N.E. 517 (1920).

It will still be robbery if the property should be taken from another room in the house other than that wherein the force or violence or putting in fear is used, *State v. Calhoun*, 72 Iowa 432, 34 N.W. 199 (1887), or from another building on the property of the complainant, *Clemens v. State*, 84 Ga. 660, 11 S.E. 505 (1890), since such property is none the less considered to be in the personal possession of the person robbed.

In *People v. Clayton*, 89 Cal. App. 405, 264 Pac. 1105 (1928), it was held that knocking a strong box from under the arm of the victim and seizing it and running off with it was robbery. Money taken from a money drawer in a bank and from a bank vault, in the cashier's presence, supports an indictment for robbery. *Wood v. State*, 98 Fla. 703, 124 So. 44 (1929). *Cf. People v. O'Hara*, 332 Ill. 436, 163 N.E. 804 (1928), where robbery from a bank attendant was held to be robbery from the person. The actual ownership may be in some other third person. *Robards v. State*, 37 Okla. Cr. 371, 259 Pac. 166 (1927). As against a wrongdoer, the actual possession or custody of the goods would be sufficient. *People v. Cabassa*, 249 Mich. 543, 229 N.W. 442 (1930).

EDMUND R. MIETUS.

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**Evidence—Proof of Present Crime by Evidence of Past Criminal Acts.**—In the prosecution of an official of the State Emergency Relief Administration for forgery of a relief order, the defendant introduced evidence to show that the order was merely part of a loose but not *mala fide* practice. To controvert this, the State introduced evidence as to other transactions of the defendant in reference to relief orders. Defense counsel objected to the admission of evidence of another offense, citing the general rule against such evidence in criminal prosecutions. On appeal, *held*, evidence admissible for the purpose of showing intent. *State v. Stuart* (Minn. 1938) 281 N.W. 299.

The general rule is that a man accused of one offense may be convicted only on evidence which shows that he is guilty of that offense. Evidence of his guilt of one or more other offenses unconnected with that for which he is on trial must be excluded. It is deemed improper to use proof of one crime as evidence of likelihood that the defendant would commit another. *Smith v. State*, 195 Wis. 555, 218 N.W. 822 (1929). Neither general bad character nor the commission of other specific disconnected acts, whether criminal or merely wanton,

are provable against the defendant in a criminal prosecution. *Fischer v. State*, 226 Wis. 290, 276 N.W. 640 (1938); *State v. Henger*, 220 Wis. 410, 264 N.W. 922 (1936).

This rule, however, has exceptions. Evidence of other crimes is admissible where it tends to establish: (1) motive; or (2) intent; or (3) absence of mistake or accident; or (4) the identity of the accused; or (5) sex crimes; or (6) a common scheme or plan embracing the commission of similar crimes so related to each other that proof of one or more of them tends to establish the accusation. *People v. Molineux*, 168 N.Y. 264, 61 N.E. 286 (1901). These exceptions also obtain in Wisconsin, *State v. Jackson*, 219 Wis. 13, 261 N.W. 732 (1935). Independent crimes may be proved to establish either the specific motive which underlay the particular crime charged, or a motive common to all of the crimes sought to be proved. Where the defendant, who was being prosecuted for the murder of his mother-in-law, set up the defense of insanity, it was relevant to show the circumstances of the shooting of his wife and child before he killed his mother-in-law as bearing on his motive and intent, if such facts could be proved by competent testimony. *People v. Zabijak*, 285 Mich. 164, 280 N.W. 149 (1938); *State v. King* (Mo. 1938) 119 S.W. (2d) 277; *Commonwealth v. Fugmann* (Pa. 1938) 198 Atl. 99.

Where a felonious intent is an essential element of the crime charged, proof of past criminal acts of similar nature are admissible where the defense is: (1) that the act was innocently or accidentally done; (2) that the act was done by mistake; (3) that the result followed an act lawfully done for a legitimate purpose, or that there is room for such an inference. Such proof is admissible as tending to show guilty knowledge, and the intent or purpose with which the particular act was done, and to rebut the presumption which might otherwise obtain.

If the question is whether a given act was accidental or intentional, the fact that the actor has performed similar acts under circumstances precluding the possibility of accident is strong proof that the act under investigation also was intentional. *Smith v. State*, 195 Wis. 555, 218 N.W. 822 (1928); *Paulson v. State*, 118 Wis. 89, 94 N.W. 771 (1903); *Fenelon v. State*, 195 Wis. 416, 217 N.W. 711 (1928). In a prosecution for manslaughter in committing an abortion where the defendant contended that the premature birth was due to natural causes it was held proper to receive evidence that other abortions had been committed in the same house by the defendant. *People v. Seaman*, 107 Mich. 348, 65 N.W. 203 (1895).

Evidence of independent and separate crimes, while inadmissible to prove guilt, is proper where it tends to aid in identifying the accused as the person who committed the particular crime under investigation, although such evidence may also tend to show the guilt of the accused. *State v. Jackson*, 219 Wis. 13, 261 N.W. 732 (1935); *People v. Filas* (Ill. 1938) 15 N.E. (2d) 496; *State v. Smoak* (N.C. 1938) 195 S.E. 72. In a prosecution for selling unstamped liquor, without a license, evidence of sales to the State's principal witness at times prior to the date in question was properly admitted. *State v. Jackson*, 219 Wis. 13, 261 N.W. 732 (1935).

In a prosecution for adultery, other adulterous acts between the same parties may be shown to establish an adulterous disposition and inclination to commit the crime charged. *Gundlach v. State*, 184 Wis. 65, 198 N.W. 742 (1924); *Commonwealth v. Piccerillo*, 256 Mass. 487, 152 N.E. 746 (1926). Such evidence has also been admitted in prosecutions for the abandonment of children. *Hopkins*

v. *State*, 126 Wis. 104, 105 N.W. 223 (1905); *Adams v. State*, 164 Wis. 223, 159 N.W. 726 (1916).

Evidence of crimes other than the one charged may be admitted when it tends to establish a common scheme or plan embracing the commission of a series of crimes so related to each other that proof of one tends to prove the other, and to show the defendant's guilt of the crime charged. *State v. Smoak* (N.C. 1938) 195 S.E. 72, is a case in which the defendant's daughter was murdered by poisoning. Testimony of a mortuary owner respecting the condition of the defendant's second wife after death, which had occurred in a similar manner, was competent. This exception applies to a variety of cases, including lotteries. Two cases involving "numbers" games are: *Commonwealth v. Zotter* (Pa. Super. 1938) 200 Atl. 264; and *Lewis v. State* (Ga. App. 1938) 195 S.E. 285. In both of these cases, the court allowed the admission of evidence of previous sales of "numbers" in order to establish the presence of a common scheme or plan underlying defendant's conduct. The showing of previous crimes to establish the presence of a scheme, plan, or series is proper also in fraud cases. *People v. Humphrey* (Cal. App. 1938) 81 P. (2d) 588, was the prosecution of an attorney for suing on fictitious claims, a series of which were allowed to be shown. Another instance is a prosecution for rioting. When the defendant claimed that she was merely an innocent spectator, evidence was properly admitted to show her participation in previous riots. *Commonwealth v. Apriceno* (Pa. Super. 1938) 198 Atl. 515. The scope of this exception is not limited to the examples mentioned, but extends also to arson, forgery, adultery—in short, to any crimes which may be shown to have such interrelation that proof of one tends to prove the other, and to any type of crime which, through repetition, takes on the aspect of a series committed according to a common scheme or plan.

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**Patents—When Does a Substitution Constitute an Invention?**—The plaintiff sought to enjoin the infringement of a patent upon the process of sizing paper. The defendant claimed that the process involved the substitution of one material for another, and that therefore the plaintiff could not claim a monopoly upon the process. The substitution had long been recognized as possible. Manufacturers, however, had never been able to utilize the chemical because its cost was prohibitive. The plaintiff's process made practical the use of the material by substantially lowering the cost of the chemical.

The court held that a monopoly should not be sustained, because a mere substitution of one material for another does not necessarily involve inventive skill, especially where such material had long been known by the industry but had not been used only because of the excessive cost involved. *Raffold Process Corp. v. Castenea Paper Co.*, 98 F. (2d) 355 (1938).

The general rule, as set forth in *Hotchkiss v. Greenwood*, 11 How. 248, 13 L.ed. 683 (1850), is that a mere substitution of materials in a known process or preparation of a product cannot be regarded as an invention, since such substitution affords nothing more than evidence of judgment and skill in the selection and adaptation of materials. Applying this general rule, it was held that the mere use of oiled silk as a covering for umbrellas was not an invention, since prior attempts to use such material had failed only because of the heavy and sticky quality of the fabrics then available. *Goldman v. Polan*, 93 F. (2d) 797 (C.C.A. 4th, 1938). Likewise, the mere substitution of one material for another does not amount to an invention, even where the new material is more