Evidence—Admissibility of Evidence of Sperate Independent Crimes

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situation. One solution would be the revival of the term "quasi-jurisdictional facts" as distinguished from "jurisdictional facts." However, to continue with the term "jurisdictional facts" would not solve the problem of confusion resulting when the term is not recognized for its technical definition. Thus, the problem would continue as it exists now. Probably, a better solution would be to define facts pertaining to jurisdiction as either primary or secondary. This would alleviate the semantic aspects of the problem and at the same time point out that there are different levels of facts concerning jurisdiction.

J. Mck.

Evidence—Admissibility of Evidence of Separate Independent Crimes.—The defendant was accused of poisoning her nine-year-old daughter for collection of life insurance and other financial benefits. Testimony of witnesses showing that the defendant, for a money motive and in a like manner, had poisoned two previous husbands and her mother-in-law, and that the defendant had collected a substantial amount of money from the death of each, was admitted to show common motive, plan or scheme. Defendant brought error. Held, generally, on a prosecution for a specific crime, evidence of a wholly independent one is irrelevant and inadmissible, however, it is admissible to show the commission of other crimes if it is to show motive, plan, or scheme. Judgment affirmed. Lyles v. State, 109 S.E.2d 785 (Ga. 1959).

The rule today is that evidence of a prior conviction of an infamous crime which would have rendered a witness incompetent at common law, or of a crime involving great moral turpitude, may be admitted to impeach the credibility of a witness. United States v. Montgomery, 126 F.2d 151 (3d Cir. 1942). Fuller v. State, 147 Ala. 35, 41 So. 774 (1906). However, this is not the law when we are dealing with a defendant rather than a witness in a criminal trial.

There is a well established general rule that proof in a criminal prosecution which shows or tends to show the accused is guilty of committing other offenses at other times, even if they are of the same nature as the one charged, is incompetent and inadmissible for the purpose of showing the commission of the crime charged. Guilbeau v. United States, 288 Fed. 731 (5th Cir. 1923).

Like most general rules the above has certain well recognized limitations and exceptions. Sykes v. State, 112 Tenn. 572, 82 S.W. 185 (1904). Evidence may be introduced of other crimes if it shows
a common scheme, plan or system encompassing the commission of the two or more crimes. *Cooper v. State*, 182 Ga. 42, 184 S.E. 716 (1936).

It has also been accepted that even though the other offenses were remote in point of time from the act charged, evidence of these may still be competent where they were all apparently inspired by one purpose. *Dietz v. State*, 149 Wis. 462, 136 N.W. 166 (1912).

West Virginia in a large number of cases has upheld the general rule that evidence of separate independent offenses is inadmissible in trial of a person indicted for a specific offense. *State v. Light*, 127 W. Va. 169, 31 S.E. 841 (1944). Evidence of separate independent crimes has been held admissible to prove guilty knowledge and intent. *State v. Barnhart*, 127 W. Va. 548, 33 S.E.2d 857 (1945). In dealing with the admissibility of evidence to show both intent and a system of criminal action, it has been said in West Virginia,

> "In a criminal case proof of another offense chargeable to the defendant is admissible to show motive or intent, if such other offense is similar and near in point of time to, has some logical connection with and tends to establish the commission of the specific offense charged against the defendant and indicates that such offense is part of a system of criminal action." *State v. Hudson*, 128 W. Va. 655, 37 S.E.2d 553 (1946).

Even in the cases that say that such evidence is admissible to show intent and motive, it may not be used to prove the doing of the act charged. *State v. Evans*, 136 W. Va. 1, 66 S.E.2d 545 (1951); *State v. Weeler*, 123 W. Va. 279, 14 S.E.2d 677 (1941).

West Virginia does not seem to vary to any extent from the majority except that it limits the other offenses that may be introduced to those that are near in point of time. The principal case does not seem to be attempting to advance any new theory of evidence acceptability or admissibility either in the majority or in West Virginia. The evidence was admitted to show that the motive for the defendant's act was the collection of insurance which had been taken out on the deceased and also it was admitted because the similar facts and circumstances of the preceding crimes were sufficient to show a common design and system. If the reasons put forth by the court have placed the case within the exceptions, as it seems to do, then the decision is in accord with accepted rules of evidence.

M. J. F.