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Statutory Rape—Previous Chaste Character

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transaction. They may be considered as exhibitions of conduct concatenated in time, place, and circumstance, comprising one composite event.¹⁵ Thus, if evidence of one offense tends to corroborate proof of another, the defendant is not being unlawfully prejudiced.¹⁶ Evidence of only one state of facts is being given.

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STATUTORY RAPE—PREVIOUS CHASTE CHARACTER.—Modern statutes creating the offense commonly known as statutory rape present an interesting paradox. Although the statutes are designed to impose “a barrier across which the profligate proceeds at his peril,”¹ fundamental notions of justice where the male is concerned have resulted in the tempering of the statutes through inclusion of various provisos. Such a qualification was added to the West Virginia statute in 1931 when the requirement that the female must be of “previous chaste character” was included.²

The extent to which the unchaste character of the female of tender years can be relied upon as a defense has yet to be determined by the West Virginia court. For although it has been held that the state can not rely on a presumption of chastity, but must allege and prove that the female is of previous chaste character,³ the question of what is meant by previous chaste character has been left unanswered.

In other jurisdictions utilizing the phrase in either statutory rape or seduction statutes, there is a difference of opinion as to the meaning of previous chaste character. Under the most widely accepted view, previous chaste character means more than reputation⁴ or purity of conduct;⁵ it defines a female who has never voluntarily had previous sexual intercourse.⁶

¹⁵ State v. Thompson, 139 Kan. 59, 29 P.2d 1101 (1934); accord, People v. Bundte, 87 Cal.App.2d 735, 197 P.2d 823 (1948).

¹⁶ “Where the impulse is single, but one indictment lies, no matter how long the action continues. If successive impulses are separately given, even though all unite in a common stream of action, separate indictments lie.” 1 WHARTON, CRIMINAL LAW § 34 (12th ed. 1932). It would seem that an indictment ought never to be quashed on the ground of misjoinder of offenses, and that the accused should be made to await the determination of the connectedness of the offenses. See note 5 *supra*.

¹ State v. Adkins, 106 W. Va. 658, 663, 146 S.E. 732, 734 (1929).

² W. VA. CODE c. 61, art. 2, § 15 (Michie, 1949).

³ State v. Ray, 122 W. Va. 39, 7 S.E.2d 654 (1940).

⁴ State v. Foster, 225 S.W. 671 (Mo. 1920).

⁵ State v. Sigler, 116 Wash. 581, 200 Pac. 323 (1921).

⁶ Lowe v. State, 154 Fla. 730, 19 So.2d 106 (1944).

"The term of previous chaste character in such a statute means the same in law as in morals. It describes a condition of sexual purity. It means a female who has never submitted herself to the sexual embrace of man, and who still retains her virginal chastity."⁷

A few jurisdictions subscribe to a much broader definition. They exclude from the protection of the statute not only females who previously have submitted to sexual intercourse, but also females who have been guilty of lewd and lascivious acts and indecent familiarities with men.⁸ Under this construction, obscenity of language, indecency of conduct, and undue familiarity with men are sufficient to render a female of previous unchaste character, even though she has not been guilty of sexual intercourse.⁹

"We cannot think that a female who delights in lewdness, who is guilty of every indecency, and lost to all sense of shame, and who may even be the mistress of a brothel, is equally the object of this statute (if she has only escaped actual sexual intercourse) with an innocent and pure woman; and that a man is equally liable under the law, as well in the one case as the other."¹⁰

It is submitted that the second view, although in the definite minority, most nearly accomplishes the aims for which the proviso was intended. The inclusion of the word "character" and the non-use of "previous chastity," or "previously chaste," or words of similar import, natural words to express the idea of actual chastity or chastity in fact, indicate that the legislature intended the proviso to cover more than prior sexual intercourse.

Various other problems have been considered in the construction of the "previous chaste character" phrase. The fact that a female previously has been the victim of a forced act of intercourse,¹¹ or has been married or married and divorced¹² does not render her an unchaste person. A woman who has been unchaste, but who has reformed and for years has led a virtuous life, is likewise protected by the statute,¹³ although a burden is cast upon the state to prove beyond a reasonable doubt that she has reformed.¹⁴

More difficult questions arise when the prior act of intercourse relied upon to show that the female is unchaste has been committed by the defendant himself, or by another person immediately prior

⁷ State v. Dacke, 59 Wash. 238, 240, 109 Pac. 1050, 1051 (1910).

⁸ State v. Wilcoxon, 200 Iowa 1250, 206 S.W. 260 (1925).

⁹ State v. Andre, 5 Iowa 389 (1857).

¹⁰ *Id.* at 395.

¹¹ Hickman v. State, 137 Tex. Crim. 616, 132 S.W.2d 598 (1939).

¹² People v. Weinstock, 140 N.Y. Supp. 453 (1912).

¹³ People v. Mills, 94 Mich. 630, 54 N.W. 488 (1893).

¹⁴ State v. Bennett, 137 Iowa 427, 110 N.W. 150 (1907).

in time to the defendant's act. In the latter situation, at least one court has held that the prior act of intercourse by an accomplice, even though immediately preceding the defendant's act, rendered the female unchaste and barred conviction of the defendant.¹⁵ It would appear more appropriate to conclude that the nearness in time of the two acts of intercourse rendered them the same act, and that both parties were equally guilty in robbing the female of her chasteness. If the facts show that the defendant aided and abetted the accomplice in the commission of his act, a more practical approach to the problem would be to try the defendant as a principal or accessory before the fact to the accomplice's act. In West Virginia both parties would be subject to the same punishment in such a situation.¹⁶

The West Virginia court likewise has not directly considered whether acts of intercourse between the defendant and prosecutrix prior to the act relied upon by the state for conviction are sufficient to render the female unchaste. Without considering the problem, the West Virginia court held in *State v. Beacraft*¹⁷ that such prior acts of intercourse are admissible to show that the defendant entertained an improper disposition toward the female and to corroborate evidence as to the particular act relied upon. It is to be noted, however, that the cases relied upon by the West Virginia court for authority are common law rape cases, and not cases involving statutory rape.

Other jurisdictions have shown considerable differences of opinion on the problem. Prior acts of intercourse between the defendant and prosecutrix have been held sufficient to show that the female was unchaste.¹⁸ However, some courts have indicated that such a result would be reached only where the prior acts of intercourse occurred in a different state¹⁹ or county.²⁰ A few courts have taken a contrary view, holding that to allow the defendant to rely on his own acts as a defense would, in effect, annul the statute.²¹ It likewise has been held proper for the state to prove acts of intercourse between the defendant and prosecutrix prior to the act alleged in the indictment since the precise time of the act is not a material element of the crime.²²

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¹⁵ *Coots v. State*, 110 Tex. Crim. 105, 7 S.W.2d 539 (1928).

¹⁶ W. VA. CODE c. 61, art. 11, § 6 (Michie, 1949).

¹⁷ 126 W. Va. 895, 30 S.E.2d 541 (1944).

¹⁸ *Henry v. State*, 132 Tex. Crim. 148, 103 S.W.2d 377 (1937).

¹⁹ *Bailey v. State*, 57 Neb. 706, 78 N.W. 284 (1899).

²⁰ *State v. Dacke*, 59 Wash. 238, 109 Pac. 1050 (1910).

²¹ *State v. Sargent*, 62 Wash. 692, 114 Pac. 868 (1911).

²² *Hunter v. State*, 85 Fla. 91, 95 So. 115 (1923).