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# Abstracts of Current Articles of Particular Interest to Prosecuting Attorneys and Defense Counsel

to the court of the criminal propensities to the commission of sex offenses of the person charged with criminal sexual psychopathy and if the report of at least one of the (two) examining physicians does establish the fact of a mental disorder to which such propensities are attributable in the person examined, the court shall order that a hearing be held" upon the petition. The trial of the issue deciding whether the defendant is a sexual psychopath may be before a jury.

The defendant in the present case was charged with assaulting a woman, and the prosecuting attorney filed a petition to determine if he was a sexual psychopath. The defendant challenged the jurisdiction of the court to proceed under the petition on the theory that (1) the provision of the Act requiring a medical examination violated the constitutional provision that "no person shall be compelled to testify against himself in a criminal cause" (Article I, section 19 of the Missouri Constitution) and (2) the Act violated the due process clause of the Missouri Constitution. The Court dismissed the first of these contentions on the grounds that the Act was civil, rather than criminal, in nature, being "curative and remedial" rather than "punitive." Defendant's second contention was based upon the claim that the Act permitted a man to be placed on trial by a single member of the medical staff of a state institution where he could be deprived of his property without the benefit of a jury. The Court found no merit in this claim, noting that under the Act "only the court or a jury, if demanded, could make a final determination as to whether or not defendant was a criminal sexual psychopathic person." The report of the psychiatrists was only for the help and guidance of the court. Nothing in the procedure established by the Act violated any of the "fundamental principles" guaranteed by the due process clause of the Missouri Constitution. (For further material on Sexual Psychopath legislation see "Confinement of the Sexually Irresponsible," Vol. 39, page 196 of this *Journal,* and "The Sexual Psychopathic Laws," Vol. 40, page 543, also in this *Journal.*)

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For abstracts of other recent criminal cases of particular interest to law enforcement officers, turn to page 710.

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## Abstracts of Current Articles of Particular Interest to Prosecuting Attorneys and Defense Counsel

**Admissibility in Criminal Prosecutions of Proof of Other Offenses as Substantive Evidence**—In an article in the June issue of the *Vanderbilt Law Review,* Clinton J. Morgan, case editor of the Review, discusses an evidence question that frequently arises in criminal trials and concerning which there is a great deal of confusion in the decided cases. The article is based primarily upon the law of Tennessee but contains citations to appropriate cases and statutes from other jurisdictions.

The general rule is to the effect that in a criminal prosecution evidence which in any manner shows or tends to show that the accused has commited another crime wholly independent of that for which he is on trial is irrelevant and inadmissible. This rule is accepted law in virtually every American jurisdiction, for the obvious reason that the probative value of this evidence would be far outweighed by its prejudicial effect upon both the judge and the jury.

To this general rule, however, there are a number of equally well established exceptions, which exceptions are so broad in scope as to have prompted the

remark that "it is difficult to determine which is the more extensive, the doctrine or the acknowledged exceptions." These exceptions are generally broken down into the following categories according to the purpose for which the prior offense is being introduced: motive, intent, identity, design or plan, knowledge, and to rebut a special defense. In addition to these categories there is the *res gestae* exception where in time of commission of the offense rather than purpose for which it is introduced, is the governing factor in determining admissibility.

Motive has been defined as "an inducement or that which leads or tempts the mind to indulge the criminal act." The courts are generally agreed that it is always proper for the prosecution to offer evidence designed to prove the motive for the commission of the crime, even though the evidence may incidentally tend to show the commission of another crime by the defendant.

Intent is the purpose to use a particular means to effect the result and accomplish the objective. Testimony as to other similar offenses is admissible to show intent where there is or may be, from the evidence, an inference of mistake, accident or innocent intent. Where an act is equivocal in its nature and may be criminal or honest according to the intent with which it is done, other criminal acts of the defendant may be shown only if they are offenses of a similar character.

Evidence of the commission of a prior crime is also admissible to prove identity. Thus, where the commission of a crime is proven, evidence to identify the accused as the person who committed it is not to be excluded solely because it tends to prove that he is guilty of another and independent crime.

Another exception to the general rule of exclusion allows the admission of evidence of prior crimes to show design or plan. This design or plan is not an element of the crime charged but is the preceding mental condition which evidentially points to the doing of the act planed. In cases of intent the doing of the act by the defendant is conceded and the only object is to negative innocent intent; whereas in cases involving design the object is to show that since defendant planned to do the act the chances are very great that he actually did it.

In many prosecutions, such as those for the uttering of forged or counterfeit paper and the receiving of stolen property, guilty knowledge is the gist of the offense to be established. In such cases the generally accepted rule is that evidence of other criminal acts is admissible to establish that knowledge, provided that the other acts are of such a nature as fairly to charge the person involved with guilty knowledge of their character.

The *res gestae* exception has been stated to be as follows: "When a collateral offense, or, as it is sometimes called, an extraneous crime, forms part of the *res gestae,* evidence of it is admissible." By virtue of this exception evidence of many prior and subsequent crimes are admitted, seemingly without regard, and in a great number of cases at least, to the question of whether its prejudicial effect will not greatly outweigh its probative value. The true meaning of this exception would seem to be that when the proof of the extraneous crime is so interwoven as to be inseparable from the crime for which defendant is being tried, then the evidence of the other crime is admissible as part of the *res gestae.*

In many criminal cases the defendant seeks to avoid conviction by interposing a special or affirmative defense. Under such circumstances the State is allowed to rebut this defense, even though the evidence offered will tend to show the commission of a prior or subsequent crime by the defendant.

In cases involving sexual offenses the courts have been much more liberal in permitting the admission of other criminal acts of a sexual nature. While the character of the offense charged is of importance in determining the question of its admissibility, of greater importance generally is whether the offered proof relates to an offense occurring prior or subsequent to the offense charged, whether it relates to an offense in which the prosecutrix was involved, and whether it is of the same character as the offense charged.

The term "prior offense," as herein used, is not confined to those offenses for which the defendant has been tried and convicted, nor is the prosecution required to prove the commission of the independent crime beyond a reasonable doubt. The only requirement is that the proof of its commission, and of the connection of the accused therewith, must not be vague and uncertain, but clear and convincing. (Copies of the *Vanderbilt Law Review* containing the complete article—Vol. 3, No. 4—may be obtained at a cost of $1.50 by writing to The Vanderbilt Law Review, Vanderbilt University School of Law, Nashville 4, Tenn.)