Volume 33
Issue 4 *Dickinson Law Review - Volume 33, Issue 4*

3-1-1929

Evidence of Unconnected Crimes in Murder Trials

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EVIDENCE OF UNCONNECTED CRIMES IN MURDER TRIALS—In the recent case of *Commonwealth v. Parker, 294 Pa. 144, 143 At. 905, (1928)*, a new exception to the general rule[1] that evidence of unrelated crimes is not admissible on the trial of a particular crime has been established, applicable to a very limited class of cases. That is, on a trial for first degree murder, evidence of other unconnected crimes may be admitted, so that the jury might thereby be aided in pronouncing sentence under the Act of May 24, 1925, P. L. 759.[2]

In the aforesaid case the defendant was on trial for murder. During the course of the trial a confession of other crimes was read along with the confession of the particular killing. On appeal the Supreme Court affirmed the lower court in permitting the whole to be presented to the jury.

The argument of the Supreme Court appears to be substantially this. The Act of May 24, 1925, P. L. 759, in cases of first degree murder, gives the jury the power and imposes upon it the duty, after having found the guilt, to inflict the sentence of life imprisonment or death as it may see fit. Previously, the fixing of the punishment was solely in the power of the court, and the privilege of having the jury declare the punishment formed no part of the common law. The purpose[3] of this statute, and similar statutes in other jurisdictions, was to diminish the reluctance of juries to bring in a verdict of guilty of murder in the first degree, to which the punishment of death automatically attached. Because of this hesitancy, juries would often bring in verdicts of a less degree of homicide, when clearly the defendant was guilty of first degree murder. The act of 1925 was passed to give the jury the power to name the penalty and discretion as to what it should be, so that an opportunity might be given for the exercise of

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[1]For general rule see Wigmore on Evidence, Vol. 1, Sec. Ed., Par. 193; Com. v. Jones, 280 Pa. 368 (1924); Com. v. Wilson, 186 Pa. 1 (1898); Goersen v. Com., 99 Pa. 388 (1882).

[2]"Every person convicted of the crime of murder of the first degree . . . shall be sentenced to suffer death . . . in the manner provided by law, or to undergo imprisonment for life, at the discretion of the jury trying the case which shall fix the penalty by its verdict." Act of May 24, 1925, P. L. 759.

The rule has been reiterated in Com. v. Mellor (Nov. 26, 1928) 144 At. 534, 294 Pa—.

[3]27 Harvard Law Review 169; People v. Welch, 49 Cal. 174 (1874).

mercy, in cases where the jury thought it should be granted, with a corresponding decrease in the jury's reluctance to find a verdict of first degree murder. In Pennsylvania there is no procedure[4] whereby a jury can determine the guilt, and then hear other evidenc to guide them as to punishment. The jury must find the fact of guilt and set the punishment in the same verdict,[5] so that, because of the discretion vested in the jury, there must be a more liberal rule of evidence to aid them in determining the punishment. Therefore, evidence of independent, unconnected crimes is admissible to guide the jury in assessing the penalty.[6]

It is obvious that the result of such evidence will be to influence the death sentence. The Supreme Court admits that evidence of other crimes is very likely to influence the jury on the determination of guilt. Such hardship, it says, is one the defendant must bear. And this significant statement is added: "The Act of 1925 was not passed to help habitual crimals and we take judicial knowledge of the fact that offenders of this designation have become so general that the law, not only lex scripta, but non scripta, must

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[4]Panek v. Scranton Ry. Co. 258 Pa. 589 (1917).

[5]Com. v. Curry, 287 Pa. 553 (1926).

[6]Under Pennsylvania habitual criminal statutes (Acts of April 22, 1794, sec. 13, 2 Sm. L. 190; Mar. 31, 1860, sec. 182, P. L. 426; May 10, 1909, Sec. 6, P. L. 496) providing for severer penalties for second or third offenders to be imposed by the court, prior convictions must be averred in indictment and proved on trial. Com. v. Curry, 285 Pa. 289 (1926); Com. v. McKenty, 80 Pa. Super. 249 (1922); Halderman's Case, 53 Pa. Super. 554 (1913); Com. v. Payne, 242 Pa. 394 (1913); Kane v. Com., 109 Pa. 541 (1885); Rauch v. Com., 78 Pa. 490 (1875); Smith v. Com., 14 S. & R. 69 (1826).

Where jury is permitted to fix penalties for second offenders under habitual criminal statutes, evidence of prior convictions is admissible. State v. Bailey, 115 S. 613 (La. 1927); State v. O'Neill, 248 Pac. 215 (Mon. 1926); Hall v. Com. 51 S. W. 814 (Ky. 1899). In New York under habitual criminal statute former offenses were regarded as ingredient element of the aggravated offense so that evidence of former offenses was admissable on this ground, People v. Sickles, 51 N. E. 288 (N. Y. 1898). This has been changed by statute in New York so that now inquiry into fact of former conviction can be made by jury only after conviction, People v. Gowasky, 155 N. E. 737 (N. Y. 1927). Also State v. Ferrone, 113 At. 452 (Conn. 1921); Ross Case, 2 Pickering 165 (Mass. 1824). In England there is a like procedure, 8 Edw. 7, c. 59, Par. 10, in Wigmore on Evidence, Vol. 1, Sec. Ed., Par. 196, note 1.

advance to protect society against them."

It appears that there is only one other decision on this point[7] and it is contra to the rule enunciated in *Com. v. Parker.* In *People v. Witt, 170 Cal. 104, 148 Pac. 928 (1922),* the prisoner was tried for murder in the first degree. On trial, evidence, otherwise irrelevant as to previous habits, as to his parents and other extenuating circumstances, was sought to be introduced, for the purpose of guiding the jury in determining the punishment. The evidence was excluded and the appellate court, upholding the exclusion, said: "We are of the opinion that our law does not contemplate any such independent inquiry on a trial for murder, and that the determination of the jury—as to death or life imprisonment is necessarily to be based solely on such evidence as is admissible in the usual mode by the indictment or information and the plea of the defendant." This decision was recognized in *Commonwealth v. Parker* as being contra to the rule therein announced by the Pennsylvania Supreme Court, but the new principle was formulated notwithstanding.

The problem now presents itself as to how far the rule will extend. Clearly, evidence of other, independent crimes is highly prejudicial to the defendant; and, unless the rule is properly limited, great injustice might result to him through the operation of the rule. Some light on this point is shed by the Court itself; for, judging from the opinion, it seems that such evidence would be admissible only, if, in the mind of the trial court, the defendant is an habitual criminal, that crime was the general manner of his life, that he was a menace to society.[8] Consequently, it would appear, if the defendant, in the opinion of the trial court, were not an habitual criminal and a menace to society, because of his manner of life, but had committed other crimes

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[7]In State v. Tranmer, 154 Pac. 80 (Nev. 1915), it was held that in a trial for murder, where a joint principal in the crime with the accused who had been previously convicted and sentenced to death had been called as a witness for the state, it was reversible error to allow the state, for the purpose of influencing the jury to inflict the death penalty on accused, to ask the witness if he was in the state's prison under a sentence of death.

In People v. Hall, 249 Pac. 859 (Cal. 1926), evidence in murder case of escape of defendant from prison was held admissible as bearing on the question of punishment.

[8]See Com. v. Mellor, supra.

of less serious nature and at a remote period, evidence of the other offenses could not be properly introduced.

Looking at the matter from a different angle, would it not be possible, by virtue of this rule, to introduce evidence, which otherwise would not be admissible, of extenuating conditions and circumstances, as was attempted in *People v. Witt,* supra, in order that the jury might be induced to leniency and inflict the lighter penalty? The reason would be just as persuasive in the one case as in the other, for in both situations the evidence would act as a beacon to guide the jury in the decision as to punishment.

Certainly the rule is a radical departure from the former stand of the courts. Every reason that has been advanced to justify the general rule excluding evidence of unrelated crimes is applicable to the exception. The evidence tends to prejudice the defendant in the eyes of the jury; it may be the deciding factor in determining the guilt; the prisoner is faced with charges he is unprepared to meet. Notwithstanding the Supreme Court has considered the value of such evidence in helping the jury to assess the penalty to outweigh the disadvantages caused to the defendant, and this with full knowledge of the burden thereby placed upon the defendant.

What justification is there then for the departure? The answer seems to be found in the words of the court that "not only the lex scripta, but non scripta, must advance to protect society against them." In other words conditions of crime have become so prevalent that they have become a source of great menace to present day society. The written law, the criminal code, has not been advanced fast enough to meet these new conditions, so that the courts by unwritten law must, as best they can, make up the deficiency. If there is no legal justification, yet there is at least a social justification in making the way hard for the habitual criminal in the interests of and in the protection of the lives and property of the people.

It would be much fairer to the prisoner, if the legislature would enact a statute permitting the jury, having decided on the guilt, to then hear evidence for the determination of the punishment. But there being no statute the Supreme Court of Pennsylvania has seen fit to adopt a course of "no quarter" against the hardened criminal, even though at the expense of a settled principle of evidence. As has been hinted before, it can only be justified in the

urgent need to suppress the habitual criminals who are so rampant today.[9]

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EQUITY DELIGHTS TO DO JUSTICE AND NOT BY HALVES—This maxim, although not often quoted in the opinions of the courts is, nevertheless, one of the most important of the maxims of equity. The significance of the maxim lies in its last words. It means that it is the aim of equity to have all interested parties in court and to render a complete decree, adjusting all rights and protecting the parties against future litigation. The principle of the maxim embraces the well-established doctrine that when equity once acquires jurisdiction it will retain it so as to afford complete relief.[1] The maxim does not always appear in exactly the above words,[2] but the rules applicable are the same.

Professor Bisphan in his book "Principles of Equity" does not recognize the maxim as a distinct one, but rather

[9]See 42 Harvard Law Review 832 for brief criticism.

[1]21 Corpus Juris p. 198, Par. 187; Piro v. Shipley, 33 Pa. Super. 278 (1907).

[2]This maxim does not appear in Francis, in Pomeroy, nor in Story Eq. Jur., but is given in Story Ed. Pl. Sec. 72. The other statements of the rule are: 1-"Equity does nothing by halves." Latimer v. Irish-American Bank, 119 Ga. 887, 47 S. E. 322, (1904). 2-"It is characteristic of equity to do justice, and not by halves." Beville v. Boyd, 16 Tex. Civ. A. 491, 42 S. W. 318, (1897). 3-"A court of equity ought to do justice completely, and not by halves." Camp v. Boyd, 229 U. S. 530, (1912). 4-"Equity does nothing grudgingly or by halves. Its outstretched arm corrects but with loving kindness withal." Stitt v. Stitt, 205 Mo. 155, 103 S. W. 547 (1907). 5-"When equity lays hold of a subject-matter it does not lift its hand until plenary and perfect justice is done as near as may be under the issues". Jelly v. Lamar, 242 Mo. 44, 145 S. W. 799, (1912). 6-"It is the desire as well as the duty of this court never to do justice by the halves, —never merely to beget business for another court,—and never, when a case is fairly within its jurisdiction to leave open the door for litigation farther or in any other place, if it can possibly be here closed." Decker v. Caskey, 1 N. J. Eq. 427. 7-"Equity will not permit litigation by piecemeal, but will determine the whole controversy where all the facts and parties are before it." Curtin v. Krohn, 4 Cal. A. 131, 87 Pac. 243, (1906).