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## The Criminal Responsibility of Married Women in Pennsylvania

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## THE CRIMINAL RESPONSIBILITY OF MARRIED WOMEN IN PENNSYLVANIA

As a general rule a married woman has the capacity to commit a crime and, having such capacity, she incurs the criminal responsibility of a feme sole in a similar situation.<sup>1</sup> However, there are several exceptions to this rule, and it is with these exceptions that we are concerned.

The most important exception to the general rule is that of marital coercion. The doctrine of marital coercion is a common law rule which holds that a married woman who commits a crime in the presence of her husband is not responsible for acts which she commits while acting under his coercion. This rule is still the law of Pennsylvania,<sup>2</sup> as well as other jurisdictions.<sup>3</sup> Under this rule it is essential to determine whether the wife committed the crime of her own free will or whether her husband applied such pressure and force as to compel her to do the acts. It is to be noted that such pressure and force need not be physical but may consist of threats.<sup>4</sup>

### *The Presumption of Coercion*

As early as the time of Edward III, the rule of marital coercion was expanded into a broad presumption.<sup>5</sup> The effect of this change was that if a married woman committed a crime in her husband's presence the law would now presume that coercion existed, coercion being presumed from the fact that her spouse was present during the commission of the unlawful act.<sup>6</sup> It is interesting to note the reasons for the development of this presumption. In the fourteenth century, the punishment imposed upon criminal offenders was extremely severe, the death penalty often being invoked for what we today would consider mild offenses. There was, however, an excellent defense available to the fourteenth century male who, by way of pleading benefit of clergy, could avoid the unpleasant consequences of his unlawful acts. This defense was naturally unavailable to women other than nuns, and so in an attempt to ease the harsh penalties imposed upon married women the courts developed the presumption of marital coercion doctrine.<sup>7</sup>

This presumption exists in Pennsylvania today. The rule is:

A presumption of coercion arises when a married woman commits a crime in the presence of her husband and, unless rebutted, this presumption is sufficient to relieve the woman of all criminal responsibility.<sup>8</sup>

<sup>1</sup> Commonwealth v. Dwyer, 29 Pa. C.C. 73 (1903).

<sup>2</sup> Commonwealth v. Balles, 157 D. & C. 581 (1946).

<sup>3</sup> For a complete breakdown of the doctrine and each state's position in reference to it, see 4 A.L.R. 266. For supplemental decisions, see 71 A.L.R. 1120.

<sup>4</sup> 27 Am. Jur. 639.

<sup>5</sup> 45 Harv. L. Rev. 1012.

<sup>6</sup> Commonwealth v. Dwyer, 29 Pa. C.C. 73 (1903).

<sup>7</sup> 45 Harv. L. Rev. 1012.

<sup>8</sup> Commonwealth v. Balles, 157 D. & C. 581 (1946); Commonwealth v. Bore et ux, 13 D. & C. 681 (1930); Commonwealth v. Hand, 59 Pa. Super. 286 (1914).

### *Scope of The Presumption*

The authorities are clear to the effect that the presumption arises only where the act is done in the presence of the husband. If a woman commits a crime in the absence of her husband no presumption arises, and there is a split of opinion as to whether coercion may be successfully used as a defense in view of the husband's absence.<sup>9</sup> There is no Pennsylvania authority on this last point, but one thing is clear in all jurisdictions and that is that there is no presumption without the husband's presence.

In *Commonwealth v. Lindsey*,<sup>9a</sup> the court said:

"Undoubtedly when the wife is guilty of a criminal act in the presence of her husband, the law presumes that he compels her to do it, but it is just as true that when she commits a crime in the absence of her husband, the law presumes she did it voluntarily, and she is answerable."

The next question is: What interpretation have the courts given to the requirement of presence? According to Pennsylvania decisions the husband does not have to be actually present physically.<sup>10</sup> It is not essential that the presence of the husband be actual or immediate; his constructive presence can be sufficient. It has been held that the husband need not be in the same room with his wife, or even in the same house, provided he is sufficiently near enough to exert a present or immediate influence.<sup>11</sup> Just how close the husband must be in order to exert such influence is a question for the jury to be determined by the evidence in each particular case. Where the wife was indicted for selling intoxicating liquor without a license and it was shown that her husband was in the house, although not in the same room, at the time of the sale, the jury found the wife innocent on the grounds of coercion.<sup>12</sup> However, where the wife alone had access to the rooms where the larceny was committed, the jury found that she acted independently of her husband and that the presumption did not arise despite the fact that the husband was in the same house at the time of the act.<sup>13</sup> An early Pennsylvania case, involving the sale of alcoholic beverages to a minor in the presence of the husband, intimated that even if the husband had not been present the wife may have been free from responsibility on the ground that the husband was constructively present.<sup>14</sup>

The presumption is a rebuttable one and can be overcome by the prosecution through the presentation of evidence which shows that the wife acted on her own volition even though her husband was present. In *Commonwealth v. Hand*,<sup>14a</sup> the prosecution met the burden of proof and overcame the presumption in favor of

<sup>9</sup> In favor of coercion as a defense even in view of the husband's absence, *State v. Grossman*, 95 N.J.L. 497, 112 A. 892; *State v. Shea*, 13 R.I. 535; *Bell v. State*, 92 Ga. 49, 18 S. E. 186; contra: *U. S. v. Swierbensi*, 18 F.2d 685; *Commonwealth v. Roberts*, 132 Mass. 267; *State v. Houston*, 29 S. C. 108, 6 S. E. 143.

<sup>9a</sup> 2 Foster 216 (Pa. 1874).

<sup>10</sup> *Commonwealth v. Bore et ux*, 13 D. & C. 681 (1930).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Commonwealth v. Lindsey*, 2 Foster 216 (Pa. 1874).

<sup>13</sup> *Commonwealth v. Forney*, 53 Montg. 293 (1936).

<sup>14</sup> *Commonwealth v. Newhard*, 3 Pa. Super. 215 (1896).

<sup>14a</sup> 59 Pa. Super. 286 (1914).

the wife by introducing testimony which showed that the wife had been running the illegal business in her own name for five years and had been acting on her own initiative. Of course, if the Commonwealth can prove that the husband and wife were not married at the time of the crime then the woman is considered a feme sole even though her future husband was in fact present.<sup>15</sup>

### Crimes

In general it can be said that the defense of marital coercion is applicable to most crimes. No distinction is made under the doctrine between felonies<sup>16</sup> and misdemeanors,<sup>17</sup> nor between crimes that are common law<sup>18</sup> in origin and those that are statutory.<sup>19</sup> Nevertheless, there are certain crimes beyond the scope of the doctrine, and even if the defendant conclusively proves that coercion existed the wife is denied the defense as to these crimes. Most jurisdictions, including Pennsylvania, hold that the crimes of murder, treason, and robbery are not within the scope of the doctrine. Once again, upon examining the reasons for the development of the rule, we find that the crimes of murder, treason, and robbery were considered sufficiently heinous as to be excepted from the defense of benefit of clergy, and so even in the fourteenth century marital coercion did not apply to these more serious crimes.<sup>20</sup> Oddly enough, however, there is one Pennsylvania case with dicta to the effect that the presumption of marital coercion will arise where the wife commits the crime of murder in the presence of her husband,<sup>21</sup> but this was overruled in *Commonwealth v. Bore et ux*,<sup>21a</sup> in which the court in discussing arson in relation to the marital coercion rule went on to say:

"From the general rule the law excepts heinous crimes, such as treason, murder, and possibly robbery, no presumption of coercion existing as to them. Certain other offenses also which from their character are generally committed by women, such as keeping a house of prostitution, are not presumed to be committed under marital coercion."

It is to be noted that there is even higher authority than the above cited case that Pennsylvania will not apply the doctrine to these more serious felonies. Chief Justice Gibson, in delivering the opinion of the court, in *McClure v. Douthitt*,<sup>21b</sup> said in effect that it was inconceivable that the doctrine of marital coercion applied to murder or treason.

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<sup>15</sup> *Commonwealth v. Forney*, 53 Montg. 293 (1936).

<sup>16</sup> *Commonwealth v. Balles*, 157 D. & C. 581 (1946).

<sup>17</sup> *Commonwealth v. Dwyer*, 29 Pa. C.C. 73 (1903).

<sup>18</sup> *Commonwealth v. Forney*, 53 Montg. 293 (1936).

<sup>19</sup> *Commonwealth v. Newhard*, 3 Pa. Super. 215 (1896).

<sup>20</sup> 45 Harv. L. Rev. 1012.

<sup>21</sup> *Commonwealth v. Conrad*, 28 L. Int. 310 (1871). In this case the evidence clearly rebutted the presumption and showed that the wife acted of her own volition. The court, however, said that had this not been so the presumption would have arisen even in this murder trial.

<sup>21a</sup> 13 D. & C. 681 (1930).

<sup>21b</sup> 6 Pa. 414.

### *Conspiracy*

A husband and wife cannot be guilty of conspiracy where no other person is alleged to have joined in the conspiracy.<sup>22</sup> At one time the courts felt that it was impossible for husband and wife to conspire on the theory that at common law husband and wife were considered as one. Thus since the crime of conspiracy requires an agreement between two or more persons to do an unlawful act, and husband and wife were but regarded as one, there could be no crime.<sup>23</sup> Thus the wife's coverture was thought to preclude an essential element of the crime. However, this theory has fallen into disuse in view of recent legislation, namely married women's property acts, which have recognized the fact that a wife is a separate individual. Nevertheless, the doctrine of marital coercion undoubtedly applies to the crime of conspiracy since the agreement between husband and wife would, in most instances, be made in the presence of the husband. Yet both may be indicted together with other persons, as the wife might be convicted on evidence showing that she conspired with other parties in the absence of the husband, or he might be convicted without her.

In *Commonwealth v. Kendig*,<sup>23a</sup> the court said:

"If both conspired she might be protected by her coverture, but if she conspired with divers other persons in his absence, when she is not presumed to have been under his control, she might be convicted. The indictment is sufficient to justify a jury in convicting her if it's shown that she conspired with other persons to the grand inquest unknown."

### *Criminal Responsibility in Other States*

In recent years more and more states have taken the position that coverture is no defense to crime, and have consequently abolished the presumption of marital coercion doctrine. Nevertheless, these states are still in, what can best be described as, a growing minority. The reason for this change of position is obvious since society has for several decades recognized the independence of the wife. This fact has found expression in other fields of the law, and so the courts which represent this minority feel that the wife should be recognized by the criminal law as an individual responsible for her own acts.

In England the presumption of marital coercion doctrine was abolished by statute in 1925,<sup>24</sup> while in the United States the courts, for the most part, have been responsible for this more modern approach. The language used by the court in *State v. Renslow*<sup>25</sup> is perhaps typical of the American position. In that case the court said:

"Under the statutes of Iowa, where practically all of the disabilities and disadvantages of coverture are removed, and a wife stands in the

<sup>22</sup> *Commonwealth v. Allen*, 24 Pa. C.C. 65 (1900).

<sup>23</sup> Stephen's Commentaries, ch. 12, Inchoate Crimes.

<sup>23a</sup> 26 Lanc. Rev. 164.

<sup>24</sup> Criminal Justice Act of 1925, § 47.

<sup>25</sup> *State v. Renslow*, 211 Ia. 642 (1930); 230 N. W. 316.

eyes of the law with practically all of the rights, duties, and privileges of a feme sole, we see no reason for the further application of this rule in this state."

While in *Dalton v. People*,<sup>25a</sup> we find the following words used by the court:

"The reason for the rule is that the husband is presumed to control the wife. This proposition having been abandoned by our legislation, the law should now require the coercion by the husband to be proved."

The proposition that husband controls wife has clearly been abandoned by the Pennsylvania legislature. The repudiation of this concept was shown through the passage of the *Married Women's Property Act* of 1945. However, despite such advanced legislation, the courts of this state have still persisted in clinging to the doctrine of marital coercion,<sup>26</sup> but undoubtedly the time is not too distant when either the legislature or the courts will repudiate the doctrine and recognize the fact that married women are individuals and as such should be held responsible for their criminal acts.

### *Conclusions*

(1) Despite a growing minority to the contrary, Pennsylvania still adheres to the rule that when a married woman commits a crime in the presence of her husband the presumption arises that she was coerced.

(2) The presumption is a rebuttable one, but unless rebutted the presumption will shield the wife from criminal responsibility.

(3) The husband's presence is essential, but such presence need not be actual or immediate; his constructive presence may be sufficient. Constructive presence has been interpreted to mean sufficiently close enough to exert a present or immediate influence.

(4) The doctrine does not apply to the crimes of murder, treason, robbery, or crimes which by their character are generally associated with women.

(5) Although the doctrine applies to the crime of conspiracy the husband and wife can be indicted together on the supposition that either may be convicted of conspiring with a party or parties as yet unknown to the grand jury.

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<sup>25a</sup> 68 Colo. 44, 189 P. 37.

<sup>26</sup> *Commonwealth v. Balles*, 157 D. & C. 581 (1946).