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EVIDENCE OF OTHER CRIMES

by Jay C. Howell

An individual is on trial for a serious crime. The police and prosecution have discovered evidence of the fact that the accused has committed **similar crimes in the past**. Can this evidence be produced at trial and used to convict the defendant?

A long established rule in our American courts forbids the prosecution from introducing evidence that tends to only prove the bad character of the accused. Our courts have not found such evidence to be totally irrelevant, but have ruled against its introduction in a jury trial because the danger of prejudicing the jury outweighs what the courts call the probative, or evidentiary value. The prosecution may not introduce evidence of other criminal acts of the accused unless that evidence is relevant for some purpose **other** than to simply show a probability that the defendant committed the crime because he is an individual of criminal character.

Nonetheless, evidence of previous crimes may be admissible to show the existence of a larger continuing plan or criminal scheme, to prove the motive or intent of the accused, the opportunity that the defendant had to commit the crime, the identity of the accused, or the absence of a mistake or accident.

In our Florida legal system, the decision whether to allow evidence of “other crimes” is often referred to as “Williams Rule testimony.” This label originated in a Florida appellate court case decided almost 50 years ago. It set the original rules and requirements for the prosecution if they sought to introduce evidence of other crimes.

In a recent Orlando case, the defendant was convicted by a jury of two counts of sexual battery or rape, based on the coercion of the victim. After conviction, the judge classified the defendant as an

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habitual felony offender and a sexual predator and sentenced him to serve two concurrent life terms in the Florida State Prison.

On appeal, the defendant asserted that evidence of “other crimes” was improperly admitted at his trial. He was convicted of having coerced sex with a homeless woman who he met at a bus station in the early morning hours on the date of the crime. At trial the defense claimed that the encounter was consensual. During the course of the trial, evidence of two other coerced sexual encounters with homeless women were introduced by the state. The defendant contended that both of those experiences were also consensual. The two women both testified, however, that they were violently forced. The defendant objected to the introduction of these “other crimes” on the ground that the testimony was not relevant and amounted to no more than an attempt to prove his bad character or his propensity to commit crimes. The trial judge overruled the objections and allowed the women to testify.

The appellate court cited the Florida law that established that evidence of other crimes is admissible when relevant to prove a material fact in issue at the trial, including the issue of consent in a sexual crime. The court concluded that the evidence of prior sexual batteries that the defendant committed on other women may be relevant and admissible if it is used to rebut the defense of consent. The other crimes may demonstrate to the jury that the defendant had a common plan or scheme to perpetrate the crime. The court ruled that in this case the victims were all physically similar transient females, who were alone when they were approached by the defendant, and who were attacked within a ten block area in downtown Orlando. The defendant isolated each woman either with the promise of a shortcut, or a place not to be bothered by the police. The acts forced on each woman were similar in method and were coerced by threats. In each instance he claimed that he had the consent of the woman.

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The court stated that there was little doubt in this case that the evidence of his collateral or other crimes was admissible. The points of commonality, taken as a whole, reflected a unique pattern of crime commission by the defendant that the jury was entitled to consider on the question of consent. Finally, the court was careful to state that the evidence of the “other crimes” did not become a feature of this trial, so that its prejudicial effect outweighed its probative value. The court noted that the trial judge admitted into evidence only two of nine alleged attacks by the defendant on various women which the state sought to introduce. The jury was carefully instructed regarding the limited purpose of the evidence and the prosecutor did not mention the similar fact evidence in his opening statement and only briefly touched on it in the closing argument.

Accordingly, the appellate court ruled that the evidence was admissible.

The case is *Houston v. The State*, and can be found in legal publications at 28 Florida Law Weekly D1972, and was decided by the Fifth District Court of Appeal on August 22, 2003.