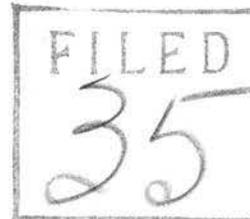


CRIMINAL ---MORTGAGED PROPERTY:

Certain evidence admissible in crime of disposing of mortgaged property.

February 3, 1936.

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Honorable Percy W. Gullic  
Prosecuting Attorney  
Oregon County  
Alton, Missouri

Dear Sir:

We acknowledge your request for an opinion, dated January 28, 1936, which reads as follows:

"I have a case coming up the 5th day of February in Howell County, Missouri. It is a case wherein the defendant is charged with selling mortgaged property, and I want to know if there are any authorities holding that the state can introduce evidence of other sales of property under the same mortgage, that is sales other than the one charged. I have evidence of this defendant's selling parts of the property under the same mortgage at different times and I want to know if there is any authority under which I can introduce the sales other than the specific one charged.

"If it is possible I would certainly appreciate an early reply to this request, at least in time that I may know before the date set for trial."

We are assuming that you have charged a man with violating the provisions of section 4100 R. S. Mo. 1929. In the case of State v. Bailey, 190 Mo. 257, 1. c. 280, our Supreme Court quoted approvingly from People v. Molineaux, as follows:

"Generally speaking, evidence as to other crimes is competent to prove the specific crime when it tends to

establish first, motive; second, intent; third, the absence of mistake or accident; fourth, a common scheme or plan embracing the commission of two or more crimes, so related to each other that proof of one tends to establish the others; fifth, the identity of the person charged with the commission of the crime on trial.' "

In the case of *State v. Drummins*, 204 S. W. 271, 274 Mo. 632, 1. c. 648, this Court said:

"For the reasons given for this trip tended to prove the intercourse alleged, as well as the promise of marriage, and the efforts made upon the trip to bring about an abortion tended also to prove intercourse and in a way the recognition by defendant of the paternity of the child. Being competent it was properly admitted, and the fact that the circumstances tended to prove the commission of a separate crime was merely defendant's misfortune, and does not in any wise militate against the admissibility of the evidence. For the rule is fairly well-settled that when evidence is admissible for any purpose, in the specific charge upon trial, such evidence will not be excluded merely because it may also tend to prove the commission of another crime."

16 *Corpus Juris*, p. 596, section 1156, provides:

"Evidence of other transactions which illustrate the intent and motives of accused in the transaction under investigation is admissible in a prosecution for participating in a sale of mortgaged property with intent to defraud."

Hon. P. W. Gullie

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February 3, 1936.

**CONCLUSION.**  
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We are of the opinion that evidence of other sales, than the one alleged, may be shown in evidence in proof of the intent and motive for the crime charged, if said other sales occurred at a time prior to the alleged crime. This crime is one in which specific intent to defraud is essential, and evidence of other frauds growing out of sales of said property under the same mortgage shows a clear connection between the two offenses, and is a circumstance which is properly admitted in evidence to prove intent and motive.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

WOS:H