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Evidence - Corroboration of Extrajudicial Confession - Quantum of Independent Evidence Required to Sustain Conviction

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EVIDENCE—CORROBORATION OF EXTRAJUDICIAL CONFESSION—QUANTUM OF INDEPENDENT EVIDENCE REQUIRED TO SUSTAIN CONVICTION—Sent to a hotel room at midnight to investigate reports of a contemplated robbery, the police found the defendant and another man, strangers in town, with loaded revolvers nearby. After defendant failed to account for the guns, the police confronted him with the robbery report, and he signed a confession. On appeal of his conviction for conspiracy to commit robbery, *held*, reversed, two justices dissenting in part. If evidence independent of the

confession is such that reasonable minds could believe that the crime was in fact committed, the corpus delicti is sufficiently established to make the confession admissible. The independent evidence in this case is inadequate for that purpose. *State v. Weldon*, (Utah 1957) 314 P. (2d) 353.

In most American jurisdictions, a felony conviction cannot be supported solely by an extrajudicial confession.¹ Sir Mathew Hale first proposed, as a rule of evidence, that some evidence independent of the confession was essential.² While this concept failed to crystallize in the English decisions,³ American jurisdictions first stated the requirement as a rule of law. This was justified by reliance on the writers,⁴ interpretations of the common law,⁵ an asserted inherent unreliability of the extrajudicial confession,⁶ and policy demands that conviction for non-existent crimes be prevented.⁷ Generally, the independent evidence required by the rule must relate to the corpus delicti.⁸ Almost all courts⁹ agree that the independent evidence need not establish the corpus delicti beyond a reasonable doubt or by a preponderance of the evidence.¹⁰ But the authorities are apparently divided on the extent to which corpus delicti¹¹ must be shown by the independent

¹ 127 A.L.R. 1131 (1940); 45 A.L.R. (2d) 1320 (1956); 103 UNIV. PA. L. REV. 638 at 641, n. 22 (1955). Compare *State v. Gilbert*, 36 Vt. 145 (1863), with *People v. Lowey*, Horovits and Fischer, Inc., 186 Misc. 745, 60 N.Y.S. (2d) 145 (1946).

² 2 HALE P.C. 280 (1680). See 7 WIGMORE, EVIDENCE, 3d ed., §2081 (1940).

³ See 7 WIGMORE, EVIDENCE, 3d ed., §2070 (1940).

⁴ WHARTON, AMERICAN CRIMINAL LAW, 2d ed., §683 (1852); 1 GREENLEAF, EVIDENCE, 2d ed., §216 (1844).

⁵ *People v. Hennessey*, 15 Wend. (N.Y.) 147 (1836).

⁶ See 4 BLACKST. COMM. *357; 1 EAST P.C. 133 (1806); 1 R.C.L. 588 (1914). Inherent unreliability is based on two grounds. First, the confession is often the product of a disturbed mind. See *State v. Dena*, 28 N.M. 479, 214 P. 583 (1923); *State v. Johnson*, 95 Utah 572, 83 P. (2d) 1010 (1938); *State v. Saltzman*, 241 Iowa 1373, 44 N.W. (2d) 24 (1950). Second, the confession is often the result of reprehensible police tactics. See *East v. State*, 146 Tex. Crim. 396, 175 S. W. (2d) 603 (1942); *Smith v. United States*, 348 U.S. 147 (1954). But see note 16 infra.

⁷ See *State v. Howard*, 102 Ore. 431, 203 P. 311 (1911); *Barnes v. State*, 199 Miss. 86, 23 S. (2d) 405 (1945). This policy demand grew primarily from *The Boorn Brothers' Case*, 6 AM. ST. TRIALS 73 (1916). See also WIGMORE, PRINCIPLES OF JUDICIAL PROOF, 2d ed., §§223, 224 (1931).

⁸ See 127 A.L.R. 1134 (1940); 45 A.L.R. (2d) 1327 (1956). Two states and two federal circuits require only that the independent evidence support the credibility of the confession. *State v. Cardwell*, 90 Kan. 606, 135 P. 597 (1913); *Wiggins v. United States*, (9th Cir. 1933) 64 F. (2d) 950; *Anderson v. United States*, (6th Cir. 1941) 124 F. (2d) 58, *revd.* on other grounds 318 U.S. 350 (1943); *Wood v. State*, 192 Md. 643, 65 A. (2d) 316 (1948). See also *People v. Lueder*, 3 Ill. (2d) 487, 121 N.E. (2d) 743 (1954); *Martinez v. People*, 129 Colo. 94, 267 P. (2d) 654 (1954); *Warszower v. United States*, 312 U.S. 342 (1941). But see *Parker v. State*, 228 Ind. 1, 88 N.E. (2d) 556 (1949); *United States v. Calderon*, 348 U.S. 160 (1954).

⁹ The only clear exception is Pennsylvania. *Gray v. Commonwealth*, 101 Pa. 380 (1882). The status of the law on the point in Georgia is doubtful. See 45 A.L.R. (2d) 1335 (1956). See also 103 UNIV. PA. L. REV. 638 at 674 (1955).

¹⁰ See 127 A.L.R. 1139 (1940); 45 A.L.R. (2d) 1331 (1956).

¹¹ In all jurisdictions the corpus delicti consists of the criminal result and the criminal agency producing it. See 103 UNIV. PA. L. REV. 638 at 649, n. 63 (1955).

evidence: one line requires an independent showing of each essential element, but allows the confession to support the independent evidence; the other requires support for some essential element of the corpus delicti by independent evidence, but allows the confession to fill in missing details or give meaning to otherwise ambiguous evidence.¹² Neither is there agreement on the quantum of evidence required by the rule. Some jurisdictions have attempted to state an objective test, requiring a "prima facie" showing of the corpus delicti.¹³ Others require that the independent evidence be sufficient to persuade reasonable minds that a crime has in fact been committed.¹⁴ In any form, the rule is subject to several cogent criticisms.¹⁵ There is little reason to regard the extrajudicial confession as inherently unreliable.¹⁶ The danger of conviction for non-existent crimes is greatly exaggerated.¹⁷ One can still commit judicial suicide, despite the rule, by a judicial confession.¹⁸ There is no reason to treat the extrajudicial confession differently from other competent evidence; its credibility should be determined by the jury under proper instructions.¹⁹ But the rule is so firmly established in our legal system as to be virtually unassailable.²⁰ Attention should be directed, therefore, to the main problem in applying the rule: what quantum of independent evidence should it require? The flexible test, requiring sufficient independent evidence to

¹² See *id.* at 656, notes 101 and 102. Even in states where independent proof of each element of the corpus delicti is required, less proof of the criminal agency is often required than of the criminal result. *McVeigh v. State*, 205 Ga. 326, 53 S.E. (2d) 462 (1954). And the two lines of authority have been reconciled on the basis of differences in the nature of the corpus delicti involved. *State v. Cardwell*, 90 Kan. 606, 135 P. 597 (1913).

¹³ Some states require an objective showing which, however, is somewhat less than a prima facie case. See 103 UNIV. PA. L. REV. 638 at 659 and 660, notes 113 and 114 (1955). One common practice in jurisdictions following the objective standard requirement is to apply the standard on an ad hoc basis in each case. Compare *State v. Hoffses*, 147 Me. 221, 85 A. (2d) 919 (1952), with *State v. Carleton*, 143 Me. 237, 92 A. (2d) 327 (1952) and *State v. Jones*, 150 Me. 242, 108 A. (2d) 261 (1954). Another is to change the objective standard itself in different cases as the facts require. See *Hardin v. State*, 109 Ala. 50, 19 S. 494 (1896); *Granison v. State*, 117 Ala. 22, 23 S. 146 (1897); *Daniels v. State*, 12 Ala. App. 119, 68 S. 499 (1915); *Braxton v. State*, 17 Ala. App. 167, 82 S. 657 (1919).

¹⁴ See 103 UNIV. PA. L. REV. 638 at 660, n. 115 (1955); principal case at 357.

¹⁵ See principal case at 355. Massachusetts and Wisconsin have rejected the rule. *Commonwealth v. Kimball*, 321 Mass. 290, 73 N.E. (2d) 468 (1947); *Potman v. State*, 259 Wis. 234, 47 N.W. (2d) 884 (1951). England applies the rule only in murder and bigamy cases. 9 HALSBURY, LAWS OF ENGLAND, 2d ed., §§21, 268 (1933).

¹⁶ See note 10 *supra*. The psychopathic mind generally assumes responsibility for an offense actually committed. Police brutality usually results only when enforcement officers have knowledge of an existent crime. In either instance, the rule affords no protection. See *Commonwealth v. Knapp*, 26 Mass. (9 Pick.) 495 (1830); *Cayford's Case*, 7 Me. 57 (1830); *Hopt v. Utah*, 110 U.S. 574 (1884); *Smith v. United States*, 348 U.S. 147 (1954); 3 WIGMORE, EVIDENCE, 3d ed., §867 (1940).

¹⁷ 3 WIGMORE, EVIDENCE, 3d ed., §867 (1940).

¹⁸ The judicial confession requires no independent evidence. See 3 WIGMORE, EVIDENCE, 3d ed., §821 (1940).

¹⁹ The extrajudicial confession is competent evidence. See 45 A.L.R. (2d) 1334 (1956).

²⁰ See *Daeché v. United States*, (2d Cir. 1918) 250 F. 566.

persuade reasonable minds that a crime has in fact been committed, seems the soundest standard.²¹ An objective standard is said by some to be easier to apply,²² but the sufficiency of the independent evidence must still be determined subjectively by the judge regardless of the standard stated. Further, ease in reciting a formula too often results in ignoring the factors which should be controlling.²³ Consequently, while the majority's application of the reasonable sufficiency test to the facts of the principal case can be criticized,²⁴ the court is to be commended for adopting the most rational quantum test available.

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²¹ Variables which should influence the quantum of independent evidence required by the rule include the seriousness of the crime, the nature of the crime, the availability of independent evidence, the circumstances in which the confession was obtained, and its apparent credibility.

²² Principal case at 358.

²³ *Ibid.*

²⁴ This crime is neither serious nor likely to evoke a confession by mental disturbance or police brutality. Little independent evidence is available, since the crime itself is nebulous. The confession was obtained in circumstances which support its credibility, and was readily believable on its face. The independent evidence presented (see statement of facts) should have been sufficient to sustain the conviction.