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CRIMINAL LAW-PROOF OF THE CORPUS DELICTI BY THE USE OF EXTRA-JUDICIAL CONFESSIONS

Theodore Sachs
University of Michigan Law School

CRIMINAL LAW—PROOF OF THE CORPUS DELICTI BY THE USE OF EXTRA-JUDICIAL CONFESSIONS—Defendant, a physician, was accused of the murder of his cancer-ridden patient by the injection of 40 c.c. of air into a vein of the patient's arm shortly before her death. The defendant had noted on the patient's medical chart the fact of the injection and that of her death, apparently a few minutes later. He subsequently dictated the same facts to his nurse, and later made similar admissions to local enforcement authorities and others, making such statements on the day of his arrest and immediately thereafter. At the trial, a pathologist, called as an expert witness on behalf of the defense, testified that death was caused by factors other than the air injection, namely, some one or more diseases. The defense attorney argued that the prosecution had failed to prove beyond a reasonable doubt that the patient was still living when defendant injected the air, that he had any motive or intent to kill her, that he had actually reached a vein, that he injected a lethal dose, that the vein was "open" to the heart, that an embolus was formed, or that air embolism was the cause of death. Upon a verdict of the defendant's innocence, *held*, acquitted, no causal relationship having been proved between the air injection by the defendant and the death of the patient. *State v. Sander*, (N.H. 1950), N.Y. TIMES, March 10, 1950, p. 1:6.

It is a uniformly accepted principle of ancient origin that one may not be convicted of the commission of a crime unless the prosecution has affirmatively established the corpus delicti.[1] Corpus delicti may be defined as the fact that a crime has actually been committed.[2] Such fact is generally spoken of as having two elements: (1) the existence of a certain act or result forming the basis of the criminal charge, as the occurrence of an injury or loss, and (2) the existence of a criminal agency as the cause of this act or result.[3] Occasionally, a court has added a further element, the proof of the accused as the guilty person;[4] it has been submitted, however, that the requirement of this additional element amounts to equa-

[1] 23 C.J.S. §916 (1940). See, generally, 68 L.R.A. 33 (1905).

[2] Iowa v. Cristani, 192 Iowa 615, 185 N.W. 111 (1921); State v. Kindle, 71 Mont. 58 at 63, 227 P. 65 (1924).

[3] Ibid.; Langston v. State, 151 Ga. 388, 106 S.E. 903 (1921); Redd v. State, 63 Ark. 457 at 466, 40 S.W. 374 (1897).

[4] Carrasco v. State, 130 Tex. Cr. 659 at 664, 95 S.W. (2d) 433 (1936); McBride v. People, 5 Colo. App. 91, 37 P. 953 (1894). Some courts following this view relied on WHARTON, CRIMINAL EVIDENCE, 8th ed., §325 (1880). The succeeding editions of Wharton dropped the element as a part of the rule.

tion of the corpus delicti with the state's case against the defendant and for that reason the view has been rejected.[5] The origin of the rule (i.e., the rule requiring proof of the corpus delicti) is generally attributed to Lord Hale,[6] who explained its purpose as a preventive against such possible miscarriage of justice as the execution of a defendant for criminal homicide though no person had in fact been killed.[7] The rule has also been explained in terms of the environment in which it grew, that of a society ready to provide capital punishment for a multitude of offenses, offering the rule as its antidote for misplaced, overzealous prosecution.[8] The rule has generally been deemed a wise prophylactic against prosecution without fundamental basis, though in certain of its implications it has evoked criticism by current writers.[9] American authority has relaxed the standards of proof necessary to establish the corpus delicti, and it is the general rule today that circumstantial or presumptive evidence will suffice.[10] But almost with no dissent,[11] the authorities state that an extra-judicial admission, declaration, or confession will not of itself suffice to establish the necessary proof.[12] Evidence *aliunde* such admission, declaration, or confession is required,[13] though it is generally accepted today that the extra-judicial confession taken in conjunction with corroborative evidence will suffice for proof, an independent showing of the corpus delicti not being necessary.[14] In the principal case, the existence of a dead body is an accepted fact. But

[5] Lowe v. People, 76 Colo. 603, 234 P. 169 (1925).

Some early authorities were inflexible on the point that proof of the corpus delicti should *precede* proof of defendant's connection with the crime. McBride v. People, supra, note 4. Later cases embody a view that this should desirably be so [Lowe v. People, 76 Colo. 603, 234 P. 169 (1925)] or that the order must be observed, but subsequent proof of the corpus delicti will suffice to correct the earlier error of order. Holland v. State, 39 Fla. 178, 22 S. 298 (1897). The latter view is really a restatement of today's general rule—that order of proof is immaterial.

[6] It has been suggested that Coke expressed the policy argument earlier. 29 VA. L. REV. 1070 (1943).

[7] 2 HALE, P.C. 290 (1736), as cited in 68 L.R.A. 33 at 34 (1905).

[8] 68 L.R.A. 33 (1905).

[9] It is argued that an extra-judicial confession should suffice to establish the corpus delicti, since it is contended that the probability of a coerced, false confession is grossly exaggerated; therefore, the discounting of an extra-judicial confession should be done empirically, not universally by virtue of "unyielding dogma." 7 WIGMORE, EVIDENCE, 3d ed., §2070 (1940); 29 VA. L. REV. 1070 at 1071 (1943). To the same end, see the interesting argument in State v. Lamb, 28 Mo. 218 at 230 (1859).

[10] Hoch v. People, 219 Ill. 265 at 284 (1905); Bradford v. State, 104 Ala. 68 (1893).

[11] Stephen v. Georgia, 11 Ga. 225 (1852) (though the court alternatively finds corroborative evidence); State v. Lamb, supra, note 9 (but a subsequent Missouri case points out that the remarks in the Lamb case are dicta, since the confession was before a magistrate, and therefore, by common definition, was not extra-judicial). It should be noted that those cases following the minority view are apparently all quite old.

[12] Winslow v. State, 76 Ala. 42 (1884); People v. Peters, 326 Ill. App. 512, 62 N.E. (2d) 139 (1945); People v. Lane, 49 Mich. 340, 13 N.W. 622 (1882).

[13] "A confession is an acknowledgment by accused in a criminal case of his guilt of the crime charged." 22 C.J.S. §816 (1940). Extra-judicial confessions are those which are made by a party elsewhere than before a magistrate or in court, while judicial confessions are those made in conformity to law before a committing magistrate or in court in the course of legal proceedings. State v. Bowman, 294 Mo. 245 at 264, 243 S.W. 110 (1922).

[14] People v. Kirby, 223 Mich. 440, 194 N.W. 142 (1923). The concise majority opinion is not altogether clear that corroborative evidence would suffice, though that is implied.

the proof of the corpus delicti would have necessitated the further showing that it was brought to death by the agency of another who acted with the criminal intent appropriate to liability. The only evidence upon which that conclusion could have been reached included the doctor's own entries on the medical chart, and his subsequent admissions of that act in dictation to his nurse, and later, to local enforcement authorities. In view of the rule concerning uncorroborated extra-judicial confessions, it is surprising that that defense was not invoked, for the prosecution apparently offered no independent objective or even circumstantial evidence of the commission of a crime to substantiate the doctor's own admissions. The defendant instead relied on another aspect of failure to prove the corpus delicti, arguing that his own acts apart from unexplained motivation were in respect to an already deceased person. The jury agreed and the defense thereby disproved any causal relation between such acts and the patient's death.

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The case's concurring and dissenting opinions carry full and varied discussion of the problems of the doctrine. Meisenheimer v. State, 73 Ark. 407 (1904) (statute). Other cases are collected in 68 L.R.A. 33 at 50 ff. (1905).