Journal of Criminal Law and Criminology

Volume 47 | Issue 1 Article 16

1956

Arson's Corpus Delicti

William H. Hopper

ARSON'S CORPUS DELICTI

WILLIAM H. HOPPER

William H. Hopper is a special agent for the Mutual Investigation Bureau, Chicago, and a graduate of the College of Arts and Science and the School of Law, Tulane University. He has also pursued special studies in police administration at Michigan State College. An earlier paper of his, "Circumstantial Aspects of Arson" appeared in this Journal, and in addition to extensive work in the investigation of these problems, Mr. Hopper has appeared on numerous arson training programs held in the middle west and southern United States.—EDITOR.

The purpose of this article is to provide the arson investigator with a working knowledge of what constitutes the corpus delicti of arson. In order to successfully prosecute an arson case we must have, and prove, three essential elements of the crime—namely: (1) that a burning occurred; (2) that the burning was the result of a criminal agency; and (3) that the accused was responsible for the criminal agency. Our method of approach for attaining the above stated purpose will consist of the following four steps: first, Definitions; second, Application of Principles; third, General and Specific Examples; and fourth, Conclusions.

An attempt will be made to formulate a working hypothesis from each rule, definition, or principle. However, in this connection some consideration must be given to the various jurisdictional districts of the United States. While this article purports to be the majority view, it is readily admitted that some jurisdictions do not conform to said view—being in disagreement with the changing times. (This is the author's opinion; and it is conceded that those who have not kept abreast of the current advancement in criminal jurisprudence would be the last to admit such a fact. This is not an argument for the majority views always being the legally correct view).

Before plunging into our subject matter there is one fundamental fact or principle which must be stated and understood or otherwise we will be unable to fully comprehend this subject. In criminal law, or for that matter, in any phase of law and in many other fields of endeavor there are few clear cut cases where we can state, as an absolute, that black is black and white is white. Rather there are gradations of gray—running from the coal black to the medium gray, the light gray, and finally to the pure white. It has been stated that a true sign of maturity is the ability to distinguish the important from the unimportant. And applying this statement to our problem, it can be said that a true sign of the good arson investigator is his ability to relate the preparation of his case to the scale of grays—black being a complete lack of evidence of criminal incendiarism, and white the ultimate or consummated conviction of the arsonist. Thus, do not expect a cure-all, an answer to all questions in this article. However, do expect an explanation of the subject matter, and a possible workable solution which we can apply in our everyday arson investigation.

DEFINITIONS

Henry C. Black's *Law Dictionary* (St. Paul, West, 1933) has the following to say on our subject matter:

> CORPUS—Body; an aggregate or mass, (of men, laws, or articles;) physical substance, as distinguished from intellectual conception. A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The corpus delicti (body of an offense) is the fact of its having been actually committed.
>
> DELICT—a wrong, injury, violation, or offense.
>
> CORPUS DELICTI—The body of a crime. The body (material substance) upon which a crime has been committed, e.g, the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed.

Arthur F. Curtis in *A Treatise on the Law of Arson* (Buffalo, Dennis, 1936) states in Section 6, and 486:

> CORPUS DELICTI—The mere burning of a building does not constitute the corpus delicti of the crime of arson. There is no presumption that a burning building has been intentionally set on fire; on the contrary the presumption of innocence, which is accorded to an accused, carried with it a presumption that the fire is of accidental or providential origin. Thus, the corpus delicti requires, not only the burning of a building, but also that the burning was caused by a criminal agency.
>
> CORPUS DELICTI—In all prosecutions for arson there are two elements of the crime which the prosecution must prove beyond a reasonable doubt: (1) the corpus delicti; that is, a fire caused by a criminal agency; and (2) the identity of defendant as the one responsible for the fire. The mere possibility that the fire was occasioned by spontaneous combustion (sic) or by some other cause innocent of criminal intent, does not demand an acquittal, for the jury must act on probabilities, not possibilities.

We can see from the above definitions that the presumption of accidental or providential origin of the fire must be rebutted. The court in *Hurst v. State*[1] had the following to say:

> The presumption is that any fire is a result of accident and providential cause rather than criminal design. . . . It must appear from either direct or circumstantial evidence, beyond a reasonable doubt, that the fire was of incendiary origin and that the defendant was the guilty party.

In connection with refuting the presumption remember that circumstantial evidence may be, and generally is, used to prove the corpus delicti. In *State v. Perras*,[2] the court said:

> The mere fact of the burning of a building is not sufficient to establish the corpus delicti, for if nothing more appears it will be presumed that the fire was the result of accident or some providential cause, rather than the result of a criminal design, but the incendiarism may be proved by circumstantial evidence.

[1] 88 Ga. App. Rep. 798, 78 S. E. 2d. 80 (1954).
[2] 117 Vt. 163, 86 A. 2d. 544 (1952).

APPLICATION OF PRINCIPLES

Curtis, *Arson*, in Section 282 states:

> ORIGIN OF FIRE—The mere fact of a fire carries no presumption that it was caused by deliberate human agency. On the contrary, the courts indulge the presumption, until the contrary is shown, that the fire was of accidental or providential nature. Nothwithstanding that it may be difficult to convict for the offense of arson, the rule that upon the prosecution devolves the burden of showing that the burning was the result of criminal design, is inflexible.

Thus, commencing with the origin of the fire, we must show that the burning was the direct result of a criminal design. From past experience it is quite evident that this cannot be proved in all cases of incendiarism. And even in those cases which are actually accidental or providential we are not always able to show the exact cause of the blaze. Nevertheless, this fact should not deter us from personal improvement which in the long run will increase our proficiency in solving the individual arson case.

In *Smith v. State*,[3] the facts were that defendant had arguments with both the owner and occupant of the burned house. He had threatened the occupant. On the morning of the fire the occupant built a small fire in a stove with wood that would not ordinarily burn over thirty minutes. She left the house about 7:15, and her mother locked up and left about 7:45. The stove fire was not replenished after 7:00 o'clock. The stove and electric wiring were in good condition. There was no lightning that morning. About 8:30 o'clock defendant and wife drove up to house. Defendant broke open door, and they went inside for about five minutes. They drove away but returned in a few minutes and parked across the road. They watched the house about three minutes before again driving away. The fire was discovered a few minutes later. The court stated:

> To support a conviction of arson it is necessary to show that the burning was not due to an accidental or providential cause. . . . There were facts in evidence from which the jury could infer that the origin of the fire was neither accidental nor providential. . . . From these facts the jury was authorized to infer that the fire was criminal in its origin.

Although the arson investigator should never usurp the functions of the prosecutor, it is still wise to keep in mind certain fundamental principles which the prosecutor has to face in presenting our case before the court. Curtis, *Arson*, Section 239, has the following to say on Order of Proof—Generally:

> The strict order of proof requires that the State produce evidence of the corpus delicti before presenting its evidence to identify the incendiary. A confession of the accused should not be presented in evidence until the prosecution has presented sufficient evidence of the corpus delicti to go to the jury on that point, ... Oral admissions of facts made by the prisoner are distinguished from confessions, and it is not error to prove such admissions before completing the proof of the corpus delicti.

[3] 85 Ga. App. Rep. 129, 68 S. E. 2d. 393 (1951).

Of course, some variance may be indulged at the discretion of the court. For example, it sometime happens that the evidence showing the incendiary nature of the fire is the same evidence which indicates the criminal agency of the accused.[4] In the cited example, the State's case consisted of defendant's alleged confession and the testimony of one witness who stated that defendant was employed at the cemetery when a fire burned a tool shed on the cemetery grounds. In reversing the conviction and remanding the case, the court stated:

> While it has been held that a defendant's confession, when the corpus delicti is not otherwise proved, is insufficient for a conviction, this does not mean that the corpus delicti must be proved by the evidence, aside from the confession, beyond a reasonable doubt. On the contrary, it was early held that it is the mere naked confession, uncorroborated by any circumstance inspiring belief in its truth arising out of the conduct of the accused or otherwise, which is held insufficient to convict, and the corroborating fact or facts in proof need not necessarily, independent of the confession, tend to prove the corpus delicti. Direct and positive evidence is unnecessary to prove the corpus delicti, and it is not essential that it should be established by evidence independent of that which tends to connect the accused with its perpetration.

It is probably best in most cases for the court to allow the prosecutor to present his case as best he can without too strict an enforcement of the rules concerning order of proof. Such a procedure would not necessarily contravene the constitutional rights of the accused.

Probably one of the greatest periods of letdown, or relaxed feeling of good will, occurs after a confession has been obtained in the investigation of an arson case. Actually, this is the time for keen analysis; consideration of all circumstances and factors; and a compilation of the case to determine if there is really sufficient evidence of probative value to assure a conviction in court. Many cases have been lost right at this point. Let us consider what Curtis, *Arson*, has to say under Section 415:

> CONFESSIONS—CORROBORATION—The rule that a confession cannot be considered as evidence, unless the corpus delicti has been established by other evidence, refers only to consummated crimes, and not to an attempt to commit arson.

In connection with the reference to attempt under the above section, consider *State v. Braathen*.[5] The facts in this case consisted of the following: A fire occurred in defendant's house. State witnesses and photographs proved there was a burning and charring of some of the wood in the interior. An oral admission by defendant was admitted into evidence. He was charged with attempt to burn; and convicted. The District Court granted a new trial; but this was reversed, and the case remanded with instructions to trial court to enter judgment. The court in defining what constitutes burning said: "It is sufficient if the fire is actually communicated to any part thereof, however small." The court goes on to say that even though the State actually proved arson, the defendant can still be convicted of attempt under the statute. Submitted that the latter would not be true in all jurisdictions.

[4] *People v. Lueder*, 3 Ill. 2d. 487, 121 N. E. 2d. 743 (1954).
[5] 77 N. D. 309, 43 N. W. 2d. 202 (1950).

There are many cases of arson which are reduced to attempted arson or to some other lesser offense for various reasons—one being an easy out for the prosecutor. However, such action by the prosecutor, grand jury, or the court is not a duty, privilege, or right of the arson investigator. If the investigator indulges in usurping the functions of others, he is taking on responsibilities for which he is not authorized, trained, or competent to uphold. Be this as it may, the arson investigator should know and understand the statutes concerning arson and related crimes. With this knowledge he will know that if there is any burning or charring, however slight, of any part of the building or structure, arson has been committed, provided that he can prove the corpus delicti. He will know that such charring is not an attempt, but the consummation of the crime of arson.

Curtis, *Arson*, in Section 416 states:

> CONFESSIONS—SUFFICIENCY OF CORROBORATION—The statutory requirement that a conviction cannot be had upon a confession without additional evidence of the commission of the crime, does not demand that the additional evidence, of itself, show the corpus delicti beyond a reasonable doubt. A conviction cannot be sustained without proof of the corpus delicti beyond a reasonable doubt, yet the jury may consider the confession when deciding the ultimate fact of guilt. . . . In any case it is permissible to prove the corpus delicti by circumstantial evidence.

Independent evidence may allow a consideration of the confession,[6] and together they may justify a conviction, although the independent evidence would not be sufficient proof of the corpus delicti without the confession.[7] But remember that motive alone is not sufficient corroboration for a confession to be admissible. In the first case cited above, *State v. Guastamachio*, the facts were that defendant, manager of a cafe, was in the basement around 1:00 o'clock in the morning. He locked up and left about 1:15 o'clock; and the fire was discovered about 1:30 o'clock. A discarded wood ice box was found in the basement; and near it was a wooden barrel containing rags and papers. Several burned barrel staves and paper were found near the ice box which was charred from bottom to top. The assistant fire chief stated that spontaneous combustion (sic) had caused the fire. The fire chief looked at scene and then told defendant not to clean up the debris. However, defendant and his father did clean it up. The compressor and electric wiring were in good working condition after the fire. The business was losing money; and the defendant's father had a financial interest in the business. The defendant signed a written confession. In part of its opinion the court stated:

> To warrant a conviction, it must be shown upon the whole evidence beyond a reasonable doubt (1) that a crime has been committed and (2) that the person charged therewith was an active agent in the commission thereof. The former cannot be proven solely by extrajudicial confession. Such a confession, however, may be considered in connection with other independent material and substantial evidence to establish the corpus delicti. . . . The fact that there was a motive for an incendiary fire, that the fire started about the time the defendant was at the place where it started, that the debris in the cellar was cleaned up by

[6] *State v. Guastamachio*, 137 Conn. 179, 75 A. 2d. 429 (1950).

[7] *Brower v. State*, 217 Miss. 425, 64 So. 2d. 576 (1953).

the defendant contrary to the orders of the authorities and that other possible causes of the fire had been eliminated constituted, when taken together, enough evidence that the fire was incendiary to warrant the admission of the confession.

In *Brower v. State*,[8] the facts consisted of a fire burning a church shortly after midnight. The weather was fair. There were no electrical wires connected to the building, which had been cleaned and the windows closed about a month. After the fire a set of tracks of ordinary stride, were seen leading up to the church; and another set, of greater stride, went away from the building. When bloodhounds were brought to the scene they merely stood around, looking at defendant. Defendant was not a member of church and had no connection with it; but he had obtained two insurance policies for $1,500 each on the building. Defendant confessed. The court, in part of its opinion, stated:

> To prove the corpus delicti it is necessary for the State to show that the church burned and that the burning was caused by a criminal agency.... It is well settled that the evidence in proof of the corpus delicti does not have to be entirely independent and exclusive of the confession. It is sufficient when the corpus delicti is established by other evidence and the confession taken together.

Curtis, *Arson*, states in Section 276:

> CONFESSIONS—One accused of the crime of arson, although he has voluntarily made a confession, cannot be convicted unless there is other evidence to show the corpus delicti.

The above section merely emphasizes what we have already considered: that a confession plus corroboration does not necessarily equal a conviction. The confession plus the corroborating evidence must show the guilt of the accused beyond a reasonable doubt. And before a confession or admission of guilt can be introduced into evidence there must be proof that the crime charged has been committed.[9] In the cited case the court said: "In a charge for arson there must be some evidence of a fire in order to convict".

GENERAL AND SPECIFIC EXAMPLES

Although our subject matter is being delimited as much as possible to the corpus delicti in arson cases, it is not considered a digression to mention evidence in general because all phases of arson investigation are interrelated. The guilt, or innocence, of a particular accused can be proved by either direct or circumstantial evidence.[10] The same statement holds true for proof of the corpus delicti. In the cited case, *Whatley v. State*, the facts were that the fire was discovered around 3:15 o'clock in the morning. An automobile was heard to pull away from the house a few minutes before. There were three separate fires; dresser drawers had been pulled out and filled with kerosene soaked papers; and holes had been cut in the walls. There were no

[8] *Ibid.*
[9] *Jefferson v. Sweat*, 76 So. 2d. 494 (1954).
[10] *Whatley v. State*, 37 Ala. 706, 75 So. 2d. 182 (1954).

personal effects in the house; and a witness had these effects. All windows were shielded by shades, bed spreads, or sacks. In its opinion the court stated:

> In arson the corpus delicti consists first of a building burned; and second, that it was wilfully fired by some responsible person, and the guilt of the defendant may be proven by circumstantial evidence as well as by direct evidence.

Using some specific cases as examples, let us consider *People v. Burrows*,[11] where there was evidence of three separate fires; with charred paper in the hole burned by each fire. Much of the household and personal effects had been removed. A partial list of the furnishings was found in the defendant's purse following the fire. Also, the defendant had the opportunity to notify the fire department but failed to do so. The court, in effect, stated that the above evidence was sufficient to establish the corpus delicti and prove that defendant was the guilty party.

In *Boroquez v. State*,[12] the essential facts were that the defendant came home intoxicated; and was later seen carrying some personal effects from a room of the house, while smoke was pouring from this room. When arrested at the scene the defendant's clothing had an odor of kerosene; and there was kerosene in the room where the fire occurred. Thus, it is easy to understand how the court could say: "The conclusion that the house was incendiarily set afire is authorized by the presence of kerosene in various places and on different objects of the room". Special attention should be given to personal effects by the arson investigator. It is human nature to wish to preserve that which has special meaning or value to us; and often the arsonist is unable to resist the temptation to remove a treasured photograph, Bible, shotgun, et cetera. The removal of such articles would be circumstantial evidence tending to establish the corpus delicti.

Quite often an accomplice can prove to be the key in helping us to show the corpus delicti. In *People v. Adams*,[13] an admitted accomplice testified that the automobile had been set afire in two separate places. A Special Agent of the Automobile Theft Bureau testified that the fire around the motor had not passed to the interior of the automobile and was thus a separate fire from the interior one. The court stated: "The evidence relating to the setting of the fire in two separate places in the automobile corroborated the testimony of the accomplice that it was of incendiary origin, and not the result of an accident." It is quite evident that under the above set of facts the testimony of only one of the witnesses would not have been sufficient.

In *Hurst v. State*,[14] the facts were that defendant and his wife had separated; and the wife moved in with a sister. On night of fire defendant was seen standing near the sister's house. His footprints were identified. Three witnesses testified that defendant had asked them for some matches shortly before fire was discovered. One witness gave defendant matches. Two oil lamps were found at a cotton patch after defendant's tracks were traced to this patch. The lamps were identified as property

[11] 119 Cal. 2d. 753, 260 P. 2d. 137 (1953).
[12] 158 Tex. Cr. R. 568, 258 S. W. 2d. 318 (1953).
[13] 119 Cal. 2d. 445, 259 P. 2d. 56 (1953).
[14] Op. cit. supra.

of the sister. Defendant confessed to burning the sister's house. In part of its opinion the court stated:

> In a case of arson, the corpus delicti consists in the proof of three fundamental facts: first, the burning of the house described in the indictment; second, that a criminal agency was the cause of the burning; and third, that the defendant was the criminal agency.

Submitted that the above is loose legal thinking in that the court has actually defined the elements necessary for an arson conviction, including the corpus delicti.

In *State v. Perras*,[15] the facts were that defendant had worked in a restaurant; but because of an argument he had quit. Later defendant threatened to put the restaurant owner out of business. Shortly before the fire was discovered a witness saw the defendant run down an alley behind the restaurant. A piece of burlap, a cigarette stub, and a partly burned match folder was found at the point of origin. The defendant denied being behind the restaurant. The court held that the above facts were sufficient to establish the corpus delicti, and the defendant's responsibility for the criminal agency.

The exact statistics are not known, but probably not one arson case in several hundred has an eye witness which the investigator is able to produce in court. And yet, some prosecutors, courts, and investigators continue to speak of having an eye witness. For example, take *Hall v. State*,[16] in which the facts were that defendant, although married, was attempting to get the owner of the burned house to live with him. He had threatened to burn her house, and even to kill her. He was at her house drunk on the evening of the fire. The owner took her two children and spent the night at another location. Shortly before the fire the defendant was seen in the vicinity of the house. Less than thirty minutes later the house burst into flames and burned. Defendant was convicted of arson. In reversing and remanding the case the court stated:

> It appears from a study of the record that no one saw appellant set the house afire; neither did anyone testify that such house was set afire; but circumstances alone are relied upon. There seems a strong possibility that same could have caught afire from a heater or pilot light therein.
>
> While we have motive and the declaration of an intent, such being useful, still such is not conclusive of guilt. For the lack of proof that the fire which destroyed this house was of incendiary origin, the judgment will be reversed and the cause remanded.

Note that the court said that "no one saw appellant set the house afire." This is believed to be an unfortunate semantical use, for without full comprehension the layman is quite likely to take too literally such utterances. For a simple example: The average person is still under the misconsception that in order to prove the crime of murder the prosecution must produce the body of the victim. The corpus delicti in murder does not consist of only the body of the victim. Using an analogy, the body of the deceased could be compared with the burned building—neither one of

[15] Op. cit. supra.

[16] 155 Tex. Cr. R. 235, 233 S. W. 2d. 582 (1950).

which, in and of itself, would prove the corpus delicti. However, also note where the court said that "same could have caught afire from a heater or pilot light therein." This stresses the importance of proving the lack of an accidental fire, especially if our proof of the corpus delicti is on the weak side.

Of course, it is natural that there will be differences of opinion as to exactly what the corpus delicti should consist of; but this is merely variations on our scale of gray hues ranging from the solid black to the pure white. Somewhere along the scale we have accumulated sufficient evidence of probative value to prove the corpus delicti in our arson case. The exact location on the scale where this result occurs is impossible to delineate. For an example of a case which approaches the light gray area—that point which almost means sufficient proof of the corpus delicti—consider *Burris v. State*.[17] The facts were that defendant's father, a farmer, had moved to town and gone into the grocery business. The family was unhappy, and the business was advertised for sale. There was insurance coverage of $6,000. A fire destroyed the building and stock. Near the rear of the building there was a pile of boxes, matches, and other articles some of which had been saturated with coal oil. A witness testified he was with defendant in a cafe near the grocery store, when defendant left the cafe for about fifteen minutes. When he returned he "was breathing pretty hard and sort of nervous." About ten minutes later they left the cafe and drove out of town. They were gone about thirty minutes when they heard the fire alarm. Defendant insisted that it was the grocery store. He later told the witness he had set the fire. Defendant's signed confession was admitted into evidence, and he was convicted of arson. In reversing and remanding the case, the court stated:

> Appellant's extra-judicial confession will not sustain a conviction unless the state is able to establish by evidence, beyond a reasonable doubt, the corpus delicti; that is, that the fire was of incendiary origin. Other than the foregoing statement, we find no fact or circumstance indicating that the fire was of incendiary origin. There is no evidence from any source that appellant was seen at or about the store on the night in question; nor is it shown that when he left the cafe he went in the direction of it. He told of tearing boards off of the window in order to set the inside afire. There is no evidence to show that this was done. There is no proof of tracks about the window to indicate that appellant or anyone else was there. In fact, there is an entire lack of evidence on the subject.

However, on the State's motion for rehearing, which was overruled, one judge dissented. In part of his dissenting opinion he stated:

> It has been held in many cases that a confession standing alone is not sufficient to establish the corpus delicti of an offense. However, in *Kugadt v. State*, 38 Tex.Cr.R. 681, 44 S.W. 989, 996, the leading case relative to such, we find the following: 'In other words, in the establishment of the corpus delicti, the confessions are not to be excluded, but are to be taken in connection with the other facts and circumstances in evidence'. Said case quotes with approval an excerpt taken from 4 American and English Encyclopedia of Law, p. 309: 'Full proof of the body of the crime, the corpus delicti, independently of the confession, is not required by any of the cases; and in many of them slight corroborating facts were held sufficient'.

[17] 154 Tex. Cr. R. 399, 227 S. W. 2d. 538 (1950).

> We think the motive is apparent, the opportunity present, the fire set and burning where appellant said, the unusual hour, and the knowledge of the identity of the store upon the part of appellant, as well as his statements to the officers, can all be taken together, and in connection with these confessions, were sufficient to satisfy the trial jury that this was an incendiary fire and set by someone at the early hour of 3:00 o'clock in the morning. . . .

It is not possible to outline or detail exactly what will constitute sufficient evidence to prove the corpus delicti in a particular case since each case is different as to facts and circumstances. Take for example, *Ricketts v. State*,[18] in which the facts were that the owner of the house had built a fire in a stove early in the morning. The owner and her children left around 9:00 o'clock, and apparently the stove fire had gone out. There was no electricity connected to the house. Owner had left a two gallon can of kerosene on the porch. There had been hard feelings between owner and defendant; and defendant confessed to setting the fire. In part of its opinion the court stated:

> No universal and invariable rule can be laid down as to what would amount to proof of corpus delicti. Each case depends upon its own peculiar circumstance. But in every case of arson two fundamental facts must appear: first, a burning; and second, some criminal agency which caused the burning. In other words, the corpus delicti in a case of arson is not merely the burning of the house in question, but that it was burned by the wilful act of some person, and not as a result of natural or accidental cause; for if nothing appears but the mere fact that the house was consumed by fire, the presumption is that the fire was a result of accident or some providential cause.
>
> The confession of one that he burned the building alone will not authorize a conviction. This confession must be corroborated by evidence which, independently of the confession, tends to establish the corpus delicti.

A perusal of different sets of facts will enable us to form a general basis from which we can conclude certain principles. Using hypothetical cases, let us consider the following: We have a building fire, but there is no physical evidence of incendiarism. Both the origin and cause are undetermined. Neither electric wiring nor spontaneous ignition can be eliminated. Perhaps we cannot even eliminate the remote possibility of sparks having ignited the building on the outside. We do not obtain a confession. There is no real motive for the fire. The entrances and exits were all found to be securely fastened when the firemen arrived. It is not believed that the above set of facts would constitute sufficient evidence (or any evidence) tending to prove the corpus delicti.

Using the same building fire and facts, except for the following changes: The electrical wires had been disconnected prior to the fire. Although the cause is undetermined, the fire originated near an interior stairway; and there were two waste-paper drums in this area. Also, the owner was in financial straits, and the building was overinsured. We still do not have a confession. This set of facts seems to move a notch along the scale toward the proof necessary to show the corpus delicti; but it is still not sufficient. From the standpoint of facts necessary for a conviction, consider *State v. Levesque*,[19] in which one witness testified he found defendant standing in the

[18] 192 Tenn. Rep. 649, 241 S. W. 2d. 604 (1951).
[19] 146 Me. 351, 81 A. 2d. 665 (1951).

cellar near a pile of burning rubbish. No part of the apartment house was burning. Defendant lived in the house with his parents. The fire department found a small fire in some papers on the floor of the cellar. The defendant gave a written statement that he set the fire in papers against a wood partition and waited until the wood started to burn. Defendant was convicted of arson. The verdict was set aside and a new trial granted. The court stated:

> The authoritative textbook writers and many courts have defined the term 'corpus delicti' and in the case of arson have stated that it is made up of two elements, the one, the burning, the other, that some one is criminally responsible for the result.
>
> The weight of authority in this country, at least, appears to be from the decided cases that the corpus delicti cannot be established by the extra judicial confession of the respondent unsupported by other evidence.
>
> In *Priest v. State*, 1880, 10 Neb. 393, 399, 6 N.W. 468, 470, the court said in speaking of confessions and corpus delicti: '***Nor is there sufficient evidence of the corpus delicti. That a crime has actually been committed must necessarily be the foundation of every criminal prosecution, and this must be proved by other testimony than a confession, the confession being allowed for the purpose of connecting the accused with the offense'.
>
> There is no definite or even circumstantial proof that any portion of the building was burned in the slightest degree or even ignited which is necessary to establish the corpus delicti. . . . mere suspicion without due proof of the corpus delicti or the crime charged will not take the place of evidence.

As we all know there are some juries who will return a not guilty verdict in spite of the State's case. However, as already pointed out, this is beyond the function of the arson investigator, and if he has competently and faithfully performed his own function he need not concern himself with losing a case ever so often. It happens to all of us.

Again using the same building fire and set of facts in the second hypothetical case; but now we have a confession from the owner that he set the fire. The circumstantial evidence when considered along with the confession would probably be sufficient to establish the corpus delicti in the majority of jurisdictions.

With the same building fire; but now we have an ignition device; or saturated paper was found at the point of origin; or there were separate fires; or there was a strong odor of a flammable liquid, all of which were foreign to the premises. Any of these facts would likely tend to prove the corpus delicti. Note that this has not established any particular person as being responsible for the criminal agency; but has merely shown or tended to show that there was a burning, as a result of a criminal agency (by the hands of a human being). Remember that the actual connection of the accused with the crime has no part of the corpus delicti. Such connection would be the third element of the crime of arson—that the accused was responsible for the criminal agency.

Consider *People v. Hays*,[20] where the defendant, owner of house, had insurance coverage of $4,500; and she had advertised the property for sale at $5,500. She increased the coverage to $6,000 on January 7, 1950. The occupant had moved out and left the house clean—last inspection being January 3rd. A witness saw defendant

[20] 101 Cal. 2d. 305, 225, P. 2d. 600 (1950).

carry an amber colored gallon bottle into the house on January 6th. This witness saw the defendant at the house again on January 10th. in the morning; and that evening he saw lights on in the rear of the house. At 2:30 A.M., January 11th, this witness was awakened and discovered the fire. The front and rear doors were forced open by the firemen, who found at least four separate fires in different rooms. One back door was open, but the screen was hooked on the inside. There were holes in some of the walls, and newspapers were stuffed into one hole. There was a box containing papers beneath one of the holes. A gas heater was turned on but not lit. The court stated in part of its opinion:

> It has been repeatedly held that incendiary origin of a fire is generally established by circumstantial evidence such as the finding of separate and distinct fires on the premises.
>
> Defendant appears to contend that the evidence of the corpus delicti was insufficient because it was not shown that defendant was present when the fire was set, nor were the means by which the fire occurred shown. The connection of the defendant with the crime is no part of the corpus delicti.

Conclusion

In reiteration, we first must prove that a burning occurred. This may be done through the testimony of firemen and other witnesses; through photographs; from a direct visit to the scene by the court; or perhaps by other means. Secondly, we must prove that this burning was the result of a criminal agency; and when this is done we have the corpus delicti—that a crime has in fact been committed. The first step is easy, but the second one is where we run into difficulty.

For a workable solution to the second step (proving the criminal agency, and thus the corpus delicti) we do not have to become lawyers, prosecutors, soothsayers, et cetera. Our problems are complicated enough without adding more fuel to the fire, so let us endeavor to use the simple and direct approach as much as possible. As a rule of thumb: *Any evidence, direct or circumstantial, which tends to prove beyond a reasonable doubt that the fire in question was in fact a set fire is sufficient proof of the criminal agency.* We have already shown that this evidence varies widely in degree, quality, and quantity. It is not necessary in all cases to completely eliminate all possible accidental causes. For example, if we have positive proof of an incendiary fire the failure to eliminate the possibility of electrical wiring also causing another fire will not distract from our case. Of course, it is always best to eliminate the accidental causes if possible.

Proving a fact beyond a reasonable doubt does not mean proving it beyond all other possibilities and probabilities. For example, in *State v. Guastamachio*[21] the court said: "Proof beyond a reasonable doubt does not require proof beyond a possible doubt." The mere possibility that something else might have occurred and caused an accidental fire does not altogether throw out our case in proving the corpus delicti. In defining reasonable doubt, Curtis, *Arson*, Section 483, states:

> It is such a doubt as reasonable, fair-minded, and conscientious men will entertain under all the facts and circumstances of the case. The prosecution need not prove guilt

[21] Op. cit. supra.

with absolute certainty, but should present sufficient evidence to produce a moral certainty of guilt, removing every reasonable hypothesis save that of the defendant's guilt.

Beyond a reasonable doubt is just what the reasonable man would believe. (Submitted that we have and will run into those who do not reason as a reasonable man should). For example, in *State v. Levesque*[22] the court said: "It is a doubt which a reasonable man of sound judgment, without bias, prejudice, or interest, after calmly, conscientiously, and deliberately weighing all the testimony, would entertain as to the guilt of the prisoner".

We are working with both the tangible and the intangible in establishing the corpus delicti. For this reason it is not always possible to assess the probative value of our evidence during the investigation. But it is not our duty as investigators to make the final decision as to whether there is sufficient evidence upon which to prosecute. However, as investigators we can endeavor to secure direct and circumstantial evidence tending to prove the corpus delicti—and the accumulative effect of this evidence should place the corpus delicti as close as possible to the white area on our scale. Thus, when our evidence moves along the scale from the black to the white, and slowly emerges from the deeper tones of gray to the lighter grays, we will have achieved our purpose of proving the corpus delicti.

Always remember that our proof of the corpus delicti may never be completely in the white area of the scale. And our maturity, as well as our competency as arson investigators, depends upon our personal ability to distinguish the important from the unimportant.

[22] Op. cit. supra.