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PENNSYLVANIA'S CORPUS DELICTI RULE IN CRIMINAL CONFESSION CASES

I. INTRODUCTION

A corpus delicti rule, in its most general sense, requires proof of the occurrence of a crime without the aid of a defendant's extra-judicial confession before the confession may be admitted as evidence. The rule is a "technical" exclusionary rule of evidence¹ within the law of confessions. The appearance of several homicide "victims" after the executions of their confessed murderers contributed to a recognition by the courts that people do on occasion confess to crimes that were never committed.² The corpus delicti requirement which resulted was an attempt to prevent convictions based solely on a defendant's extra-judicial confession by requiring some additional evidence that the crime was, in fact, committed.³

Although text writers and courts debate the need for any such rule,⁴ nearly every United States jurisdiction has some corpus delicti requirement. This Comment will consider what sort of corpus delicti rule best effectuates the purpose of the requirement without creating an impossible burden for prosecutors and a technical trap for judges.⁵

Basically, any corpus rule is a formulation of the answers to

1. McCormick uses the term to refer to particular rules for excluding relevant evidence, "technical" in the sense that . . . for long term ends they sometimes obstruct the ascertainment of truth in the particular case." C. MCCORMICK, EVIDENCE § 53 (1954). These rules "assume Relevancy, and then under special circumstances apply an extra safeguard designed to meet special dangers." 4 J. WIGMORE, WIGMORE ON EVIDENCE § 1171 (3d ed. 1940) [hereinafter cited as WIGMORE].

2. The premise of the reasoning . . . of the great majority of the courts in the United States is that there is a real danger of false confessions, coerced or psychopathic. For this premise there seems now . . . substantial foundation not only in the annals of the courts in the sense of the reported decisions thereof, but also in dependable reports of criminological investigations.

Forte v. United States, 94 F.2d 236, 38 (D.C. Cir. 1937).

3. The wisdom of this rule lies in the fact that no man should be convicted of a crime, the commission of which he confesses, unless the State shows, by other testimony, that the confessed crime was in fact committed by someone. The contrary would authorize a return of conditions that existed in the days of the inquisition.

East v. State, 175 S.W.2d 603, 605 (Tex. Crim. 1942).

4. See 7 WIGMORE § 2070.

5. [B]ecause this rule does infringe on the province of the primary finder of facts, its application should be scrutinized lest the restrictions it imposes surpass the dangers which gave rise to them. Smith v. United States, 348 U.S. 147, 153 (1954).

these questions: What additional evidence will be required? How much of it? Is the judge or the jury to determine if the burden has been met? At what stage in the proceedings is this determination to be made? This Comment focuses on the answers to these questions as enunciated by the Pennsylvania courts and examines the rule that results in relation to its actual application in Pennsylvania cases and in relation to the practice in other jurisdictions.

II. BACKGROUND

In any criminal prosecution, the state has the burden of proving the three elements of the crime: (1) the occurrence of the specified injury or loss (e.g., in homicide, a person deceased; in larceny, property missing); (2) someone's criminal agency, rather than a natural or accidental cause, as the source of the injury; and (3) the identity of the accused as the responsible agent.⁶ The first two elements, establishing that the crime was committed, constitute the *corpus delicti*.⁷ Although in most criminal prosecutions this division of the elements of a crime into *corpus delicti* and identity is a purely conceptual distinction, in the specific area of criminal prosecutions involving extra-judicial confessions, a body of rules regarding the proof of *corpus delicti* has developed to prevent convictions based solely on a defendant's confession.

Although it is questionable whether the English common law ever developed the rule that an uncorroborated extra-judicial confession would not support a conviction,⁸ a fairly extensive body of case law did espouse that policy, particularly in homicide cases. The discovery of several homicide cases where the victim outlived his confessed murderer would seem to have provided the motivation.⁹ Where that policy prevailed, it was generally formulated as a requirement of corroborating evidence specifically relating to the *corpus delicti*.¹⁰

With the apparent exception of one jurisdiction,¹¹ the rule in the United States is that an uncorroborated extra-judicial confession is not sufficient to warrant or sustain a conviction.¹² The

6. 7 WIGMORE § 2072. For a Pennsylvania case restating this rule, see *Commonwealth v. Gardner*, 282 Pa. 458, 462, 63, 128 A. 87 (1925).

7. Although Wigmore contends that the term in its orthodox sense signifies only the first element, loss or injury, the overwhelming number of American jurisdictions accept the interpretation that *corpus delicti* includes the element of criminal agency. 7 WIGMORE § 2070. For cases aligning Pennsylvania with the majority, see *Commonwealth v. Frazier*, 411 Pa. 195, 191 A.2d 369 (1963); *Commonwealth v. Turza*, 340 Pa. 128, 16 A.2d 401 (1940).

8. 7 WIGMORE § 2070.

9. See *R. v. Perry*, 14 St. Tr. 1312 (1660); *Warwickshire Case*, 3 Co. Instr. 232 (1610); 2 Hale, *Pleas of the Crown* 290 (1778).

10. See *Rex v. Sykes*, 8 Cr. App. R. 233 (1913); *Queen v. Unkles*, 8 Ir. R.C.L. 50 (1873).

11. *Commonwealth v. Kimball*, 321 Mass. 290, 73 N.E.2d 884 (1951).

12. For citations to cases in specific jurisdictions, see Annot., 45 A.L.R.2d 1316, 1320 (1956).

great majority of jurisdictions require, further, that the corroborating evidence relate to and tend to establish the *corpus delicti*.¹³ In practice, the rule requires that some specified quantum of independent evidence of *corpus delicti* be introduced before the defendant's confession and, in many jurisdictions, his admissions¹⁴ become competent evidence. In Pennsylvania, there is the additional requirement that the jury find sufficient independent evidence of *corpus delicti* as part of a guilty verdict.¹⁵

Pennsylvania's corpus rule was enunciated, without authority, by the state supreme court in *Gray v. Commonwealth* in 1882 in an opinion affirming the defendant's homicide prosecution:

[A] confession is not evidence in the absence of proof of the *corpus delicti*. . . . [W]hen the commonwealth has given sufficient evidence of the *corpus delicti* to entitle the case to go to the jury, it is competent to show a confession made by the prisoner connecting him with the crime. Under such circumstances, the jury should first pass upon the sufficiency of the evidence of the *corpus delicti*. If it satisfies them beyond a reasonable doubt that the crime has been committed, then they are at liberty to give the confession such weight as it is entitled to.¹⁶

In a line of cases from 1882 to 1972, this rule is repeated, cited, often quoted, essentially without variation.¹⁷

13. Note that the corollary to this rule is that the identity of the defendant as the guilty criminal agent need not be corroborated but may be proven solely by the confession. For citations to cases in specific jurisdictions, see Annot., 45 A.L.R.2d 1316, 1328 (1956). In the minority jurisdictions, the additional evidence need only confirm the trustworthiness of the confession but need not be corroborative of the elements of *corpus delicti*. See, e.g., *Smith v. United States*, 348 U.S. 147 (1954); *Wood v. State*, 192 Md. 643, 65 A.2d 316 (1949).

14. E.g., *Opper v. United States*, 348 U.S. 84 (1954); *People v. Cullen*, 37 Cal. 2d 614, 234 P.2d 1 (1951); *People v. Aparo*, 285 App. Div. 1171, 140 N.Y.S.2d 542 (1955); *Commonwealth v. Frazier*, 411 Pa. 195, 191 A.2d 369 (1963); *Commonwealth v. Homeyer*, 373 Pa. 150, 94 A.2d 743 (1953).

15. E.g., *Gray v. Commonwealth*, 101 Pa. 380 (1882).

16. *Id.* at 386.

17. *Commonwealth v. Palmer*, 448 Pa. 282, 292 A.2d 921 (1972); *Commonwealth v. Leslie*, 424 Pa. 331, 227 A.2d 900 (1967); *Commonwealth v. Gockley*, 411 Pa. 437, 192 A.2d 693 (1963); *Commonwealth v. Frazier*, 411 Pa. 195, 191 A.2d 369 (1963); *Commonwealth v. Stokes*, 409 Pa. 268, 186 A.2d 5 (1962); *Commonwealth v. Ross*, 403 Pa. 358, 169 A.2d 780 (1961); *Commonwealth v. Deyell*, 399 Pa. 563, 160 A.2d 448 (1960); *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953); *Commonwealth v. Lettrich*, 346 Pa. 497, 31 A.2d 155 (1943); *Commonwealth v. Turza*, 340 Pa. 128, 16 A.2d 401 (1940); *Commonwealth v. Jones*, 297 Pa. 326, 146 A. 905 (1929); *Commonwealth v. Marshall*, 287 Pa. 512, 135 A. 301 (1926); *Commonwealth v. Coontz*, 288 Pa. 74, 135 A. 538 (1926); *Commonwealth v. Bishop*, 285 Pa. 49, 131 A. 657 (1926); *Commonwealth v. Gardner*, 282 Pa. 458, 128 A. 87 (1925); *Commonwealth v. Puglise*, 276 Pa. 235, 120 A. 401 (1923); *Commonwealth v. Brusky*, 219 Pa. Super. 54, 280 A.2d 826 (1971); *Commonwealth v. Butts*, 204 Pa. Super. 54, 204 A.2d 481 (1964); *Commonwealth v. Oister*,

III. ADMISSIBILITY OF CONFESSIONS

The quantum and kind of evidence required to make competent a defendant's confession or admission has, in different jurisdictions, been enunciated as "some evidence corroborating the truthfulness of the confession,"¹⁸ "some" or "slight" corroborating evidence independent of the confession,¹⁹ "some independent . . . evidence of probative value,"²⁰ independent proof which shows "only the probability that a crime has been committed,"²¹ "prima facie proof" of corpus delicti,²² "sufficient evidence of corpus delicti to entitle the case to go to the jury,"²³ and "substantial" or "clear and convincing" independent evidence of the essential elements of the crime charged.²⁴

As enunciated consistently by the courts, Pennsylvania's rule regarding admissibility involves three elements: (1) a confession or admission²⁵ is not competent evidence in the absence of independent proof of corpus delicti;²⁶ (2) the corpus delicti consists of proof of injury or loss resulting from someone's criminal agency;²⁷ (3) in order to admit into evidence a defendant's confession, the Commonwealth must provide sufficient independent evidence of corpus delicti to raise a jury question on the issue.²⁸ Since its origin in *Gray v. Commonwealth*, Pennsylvania courts in applying the rule have had more specifically to define the quantum of evi-

201 Pa. Super. 251, 191 A.2d 851 (1963); *Commonwealth v. Gomino*, 200 Pa. Super. 160, 188 A.2d 784 (1963); *Commonwealth v. Bufalini*, 200 Pa. Super. 85, 186 A.2d 645 (1962); *Commonwealth v. DuHadway*, 175 Pa. Super. 201, 103 A.2d 489 (1954); *Commonwealth v. Adams*, 174 Pa. Super. 504, 102 A.2d 202 (1954); *Commonwealth v. Winter*, 174 Pa. Super. 35, 98 A.2d 221 (1953); *Commonwealth v. Young*, 172 Pa. Super. 102, 102 A.2d 445 (1952); *Commonwealth v. Dolph*, 164 Pa. Super. 415, 65 A.2d 253 (1949); *Commonwealth v. Ferguson*, 162 Pa. Super. 199, 56 A.2d 360 (1948); *Commonwealth v. Gold*, 155 Pa. Super. 364, 38 A.2d 486 (1944); *Commonwealth v. Eng Chuing*, 150 Pa. Super. 445, 28 A.2d 710 (1942); *Commonwealth v. Amato*, 148 Pa. Super. 151, 24 A.2d 681 (1942).

18. *E.g.*, *Wood v. State*, 192 Md. 643, 65 A.2d 316 (1949). This requirement is often referred to as a corroboration rule to distinguish it from the requirement of evidence that tends independently to prove corpus delicti.

19. *E.g.*, *People v. Smith*, 72 Cal. App. 2d 875, 164 P.2d 857 (1946); *Nelson v. State*, 50 Del. 96, 123 A.2d 859 (1956).

20. *E.g.*, *Hogan v. State*, 235 Ind. 271, 132 N.E.2d 908 (1956).

21. *E.g.*, *Hays v. State*, 214 Miss. 83, 58 So. 2d 61 (1952).

22. *E.g.*, *People v. Corrales*, 34 Cal. 2d 426, 210 P.2d 843 (1949).

23. *E.g.*, *Gray v. Commonwealth*, 101 Pa. 380 (1882).

24. *E.g.*, *Yarborough v. United States*, 309 F.2d 936 (10th Cir. 1962).

25. Hereinafter, where the term "confession" is used in reference to Pennsylvania's corpus delicti rule, it is to be understood that the same requirements and interpretations apply to extra-judicial admissions made by a defendant.

26. The Pennsylvania courts have consistently held, however, that admission of a confession before sufficient evidence of corpus delicti is introduced is not reversible error if the deficiency is afterward repaired. *E.g.*, *Commonwealth v. Lettrich*, 346 Pa. 497, 31 A.2d 155 (1943); *Commonwealth v. Ferguson*, 162 Pa. Super. 199, 56 A.2d 360 (1948).

27. See cases cited at note 17 *supra*.

28. See cases cited at note 17 *supra*.

dence necessary to make admissible the confession, the kind of evidence sufficiently independent of the confession to be considered, and the elements necessary to establish criminal agency.

A. *Quantum of Evidence Required*

It is *Gray* that defines the quantum of independent evidence required to admit a defendant's confession as that sufficient "to entitle the case to go to the jury."²⁹ That standard has been defined as evidence which, if believed by the jury, would be sufficient to establish corpus delicti beyond a reasonable doubt.³⁰ The logic of this standard is implicit since the jury must ultimately determine the existence of the corpus delicti beyond a reasonable doubt based on the evidence presented independent of the confession.³¹ Alongside this basic formulation, however, has developed the principle that the corpus delicti is sufficiently established where the circumstances attending the injury are consistent with crime although they may also be consistent with accident or, in the case of homicide, with suicide,³² and that, with respect to its burden of establishing corpus delicti, the prosecution need not negative these possibilities.³³

Since the purpose of a corpus rule is to require some assurance that a crime has actually been committed, it would seem that the *Gray* requirement should act as some modification of the latter standard at least in providing a lower limit of the "consistent with" rule to prevent its becoming merely a "possibility of crime" requirement.³⁴ Instead, the latter rule alone has been applied in some cases where the independent evidence is unquestionably "consistent with" crime but questionably sufficient in law to meet

29. 101 Pa. 380, 386 (1882).

30. Commonwealth v. Stokes, 409 Pa. 268, 186 A.2d 5 (1962); Commonwealth v. Brusky, 219 Pa. Super. 54, 280 A.2d 826 (1971); Commonwealth v. Winter, 174 Pa. Super. 35, 98 A.2d 221 (1953).

31. In most cases, the only evidence tending to establish the corpus delicti will be presented by the prosecution and should be presented prior to an offer of the confession. There is a suggestion in the opinion in Commonwealth v. Lettrich, 346 Pa. 497, 31 A.2d 155 (1943) that the defendant's testimony on his own behalf could, by its inconsistency, be considered by the jury as further evidence tending to establish corpus delicti, but this has not been developed in subsequent cases.

32. Commonwealth v. Frazier, 411 Pa. 195, 191 A.2d 369 (1963); Commonwealth v. Ross, 403 Pa. 358, 169 A.2d 780 (1961); Commonwealth v. Homeyer, 373 Pa. 150, 92 A.2d 743 (1953); Commonwealth v. Turza, 340 Pa. 128, 16 A.2d 401 (1940); Commonwealth v. Bishop, 285 Pa. 49, 131 A. 657 (1926).

33. Commonwealth v. Bishop, 285 Pa. 49, 131 A. 657 (1926).

34. In construing circumstantial or presumptive evidence in respect to the corpus delicti, we should proceed upon the theory that

the burden of convincing beyond a reasonable doubt. In *Commonwealth v. Frazier*, the police found the victim dead of gunshot wounds, found the revolver beside the body, found, from an expert's examination, that the gun had been less than an inch from the victim's clothing when fired, and found no evidence of any struggle. On the basis of this evidence, which had led the police to label the victim's death a suicide, the trial court nevertheless held the fact of a crime sufficiently established to admit the defendant's admissions.³⁵ In *Commonwealth v. Brusky*, the independent evidence held sufficient to admit the defendant's confession consisted of the testimony of the alleged larceny victim, "a very confused man of 74 who was not sure whether he lost, mislaid or had stolen [sic] wallets containing a large sum of money, the amount of which he was not able to remember," and evidence of purchases made at local stores by the defendant and of her possession of a substantial sum of money. The evidence was introduced without proof of her prior financial condition.³⁶ In *Commonwealth v. Lettrich*, the disappearance of an infant once in the defendant's custody, coupled with the defendant's inconsistent statements, was held sufficient evidence of the child's murder to admit the defendant's confession.³⁷

This "consistent with" interpretation is impliedly rejected by several cases which seem to require a more substantial showing that a crime was committed. In appeals from two arson convictions, expert testimony establishing no more than a possibility that the fires were of incendiary origin was held not to establish the corpus delicti of the crime sufficiently to admit the defendants' confessions.³⁸ In *Commonwealth v. Gold*, testimony by a store manager that the merchandise allegedly stolen could have come from his store and could have been stolen was held not sufficient

the defendant is presumed to be innocent. . . . When a conviction for felony rests altogether upon circumstantial evidence, . . . 'the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.'

State v. Bowman, 294 Mo. 245, 243 S.W. 110, 117 (1922) [citations omitted].

35. 411 Pa. 195, 191 A.2d 369 (1963). *But cf.* *People v. Rooks*, 243 N.Y.S.2d 301 (1963).

36. 219 Pa. Super. 54, 55, 280 A.2d 826, 827 (1971).

37. 346 Pa. 497, 31 A.2d 155 (1943). *But cf.* *State v. Doucette*, 147 Conn. 95, 157 A.2d 487 (1959); *State v. Johnson*, 95 Utah 572, 83 P.2d 1010 (1938). The evidence in the *Lettrich* case was so minimal that the writer of a case note on it was led to conclude:

[I]n following the lead of the Irish, Australian and New Zealand cases on homicide under circumstances where except for a confession made extra-judicially, there was no evidence of a human criminal agency, the court in the instant case reaches a sound and desirable conclusion which may presage a trend of judicial opinion in the United States upon this troublesome problem.

29 VA. L. REV. 1070, 1071 (1943) (emphasis added).

38. *Commonwealth v. Leslie*, 424 Pa. 331, 227 A.2d 900 (1967); *Commonwealth v. Winter*, 174 Pa. Super. 35, 98 A.2d 221 (1953).

proof of the corpus delicti of the crime.³⁹ Of twenty-three Pennsylvania cases appealed on the grounds that the Commonwealth had failed to meet its burden of proving corpus delicti,⁴⁰ in only these three⁴¹ was the evidence held insufficient.

In those cases where the courts rely on the "consistent with" definition of the sufficiency requirement, the requirement would appear to have been defined almost out of existence. The "consistent with" formulation does not establish any quantum of evidence required but merely establishes that there be "some" independent evidence and that it allow the interpretation that a crime was committed. Although in no case does the court speak to the point of how probable this interpretation must be, the language of the cases certainly permits the inference that so long as the evidence is consistent with crime, even though that interpretation is a bare possibility, a confession is admissible.⁴² Since the purpose of this rule is to avoid a conviction for a crime that was never committed, an interpretation requiring only evidence consistent with crime would seem to defeat the purpose of having any corpus rule.

B. *Kind of Evidence Required*

In some jurisdictions having corpus rules requiring a minimal quantum of independent evidence, e.g., "some" or "slight" evidence,

39. 155 Pa. Super. 364, 38 A.2d 486 (1944).

40. Commonwealth v. Leslie, 424 Pa. 331, 227 A.2d 900 (1972); Commonwealth v. Gockley, 411 Pa. 437, 192 A.2d 693 (1963); Commonwealth v. Frazier, 411 Pa. 195, 191 A.2d 369 (1963); Commonwealth v. Stokes, 409 Pa. 268, 186 A.2d 5 (1962); Commonwealth v. Ross, 403 Pa. 358, 169 A.2d 780 (1961); Commonwealth v. Homeyer, 373 Pa. 150, 92 A.2d 743 (1953); Commonwealth v. Lettrich, 346 Pa. 497, 31 A.2d 155 (1943); Commonwealth v. Turza, 340 Pa. 128, 16 A.2d 401 (1940); Commonwealth v. Jones, 297 Pa. 326, 146 A. 905 (1929); Commonwealth v. Marshall, 287 Pa. 512, 135 A. 301 (1926); Commonwealth v. Coontz, 288 Pa. 74, 135 A. 538 (1926); Commonwealth v. Bishop, 285 Pa. 49, 131 A. 657 (1926); Gray v. Commonwealth, 101 Pa. 380 (1882); Commonwealth v. Brusky, 219 Pa. Super. 54, 280 A.2d 826 (1971); Commonwealth v. Butts, 204 Pa. Super. 302, 204 A.2d 481 (1964); Commonwealth v. Oister, 201 Pa. Super. 251, 191 A.2d 851 (1963); Commonwealth v. Gomino, 200 Pa. Super. 160, 188 A.2d 784 (1963); Commonwealth v. Adams, 174 Pa. Super. 504, 102 A.2d 202 (1954); Commonwealth v. Winter, 174 Pa. Super. 35, 98 A.2d 221 (1953); Commonwealth v. Ferguson, 162 Pa. Super. 199, 56 A.2d 360 (1948); Commonwealth v. Gold, 155 Pa. Super. 364, 38 A.2d 486 (1944); Commonwealth v. Eng Chuing, 150 Pa. Super. 445, 28 A.2d 710 (1942); Commonwealth v. Amato, 148 Pa. Super. 151, 24 A.2d 681 (1942).

41. Commonwealth v. Leslie, 424 Pa. 331, 227 A.2d 900 (1967); Commonwealth v. Winter, 174 Pa. Super. 35, 98 A.2d 221 (1953); Commonwealth v. Gold, 155 Pa. Super. 364, 38 A.2d 486 (1944).

42. Cases cited at notes 35-37 *supra*.

the purpose of the rule is effectuated by a very strict interpretation of what evidence is actually "independent" of the confession. These courts very strictly distinguish between additional evidence which merely supports the truthfulness of the confession and evidence not only outside and additional to the defendant's statement but also independently probative on the issue of corpus delicti.⁴³ Courts making such a distinction hold that facts merely corroborative constitute no independent evidence and meet no burden of proof however slight.⁴⁴

For example, the Indiana Supreme Court has held that the finding of unidentified bones in the places where the accused confessed he had buried the pieces of the woman he murdered would certainly go to the weight of the defendant's confession but constituted no probative evidence of corpus delicti.⁴⁵ In *People v. Shanks*, the New York court held medical testimony that the decedent died of asphyxiation from gas poisoning was "no additional proof" of corpus delicti though it corroborated the defendant's confession that he had turned on the gas jets leaving the decedent asleep in the apartment they shared.⁴⁶ The Utah Supreme Court, reversing a conviction for conspiracy to commit robbery, held that the unexplained presence of two strangers in a local hotel room where were found several loaded pistols was "not sufficient evidence to meet the requirements as to independent proof of corpus delicti whatever rule as to the quantum of proof is applied."⁴⁷

43. The requirement of independent evidence leads to confusion as courts use the term to describe three different evidentiary burdens. Courts establishing the lightest burden interpret the requirement of independent evidence as meaning evidence merely outside and additional to the confession; in these jurisdictions, additional evidence which supports the trustworthiness of the confession is held to meet the requirement even if it is in no way probative on the question of corpus. A second interpretation requires that the evidence be not only additional to the confession but also independently probative on the issue of corpus delicti. Thus, testimony placing the defendant at the scene of a death is corroborative of the trustworthiness of his confession and would meet the former burden but provides no probative evidence that the death was a homicide rather than a suicide. Medical testimony that a fatal wound could not have been self-inflicted, in addition to corroborating the defendant's murder confession, is independently probative on the corpus issue. See notes 45-52 and accompanying text *infra*. The most stringent evidentiary burden requires that the prosecution provide independently probative evidence of every definitional element of the crime without reference to the defendant's confession. This would require that, in a prosecution for first-degree murder, the prosecution produce evidence outside the confession tending to prove not only a homicide but also the intent specified in the definition of the crime. See notes 54-75 and accompanying text *infra*.

44. See cases cited at notes 45-47 *infra*.

45. *Parker v. State*, 228 Ind. 1, 88 N.E.2d 556 (1949), *clarified*, 228 Ind. 13, 89 N.E.2d 443 (1949).

46. 108 N.Y.S.2d 504, 509 (1951).

47. *State v. Weldon*, 6 Utah 2d 372, 314 P.2d 353, 357 (1957). See also *State v. Hernandez*, 83 Ariz. 279, 230 P.2d 467 (1958).

In numerous Pennsylvania cases, the required quantum of independent evidence has been held satisfied by evidence which is, in the terms of the above cases, corroborative of the confession but questionably probative on the issue of whether the crime was committed. The Pennsylvania courts have considered as independent evidence of *corpus delicti* the defendant's ownership of a revolver of the same caliber as that of the fatal bullet,⁴⁸ the defendant's presence in the vicinity at the time of the alleged crime,⁴⁹ evidence that the defendant was the last person known to have seen the supposed victim alive,⁵⁰ the defendant's need of money,⁵¹ and prior threats by the defendant on the life of someone who later disappeared.⁵²

One problem inherent in the use of evidence of this nature is that the distinction between *corpus delicti* and identity tends to become blurred. In a case where a death is unquestionably a criminal homicide, the defendant's presence in the vicinity or his ownership of a particular caliber weapon may be probative on the issue of the identity of the murderer; however, where *corpus delicti* is an issue, such facts are of questionable value in determining if there was a murder at all. Perhaps certain of these cases are explainable on a cumulation theory. Although each fact alone is at best corroborative of the truth of the confession, taken together, the presence in the vicinity, at the time of the supposed victim's disappearance, of one who had previously threatened her life⁵³ may be of such weight as to have become independently probative on the issue of *corpus delicti*.

Any attempt to determine which interpretation best achieves a balance between the protection of the defendant and the burden on the prosecution, given the nature of the available evidence, requires some consideration of the degree of that burden. A requirement of independently probative evidence is perhaps more justifiable where the quantum of evidence required is slight. Where the quantum is very high, such a rule could make the prosecution's burden of proof nearly impossible; where corroborative evidence is acceptable to meet a minimal burden of proof, the purpose of a *corpus* rule may be defeated.

48. *Commonwealth v. Bishop*, 285 Pa. 49, 131 A. 657 (1926).

49. *Id.*; *Gray v. Commonwealth*, 101 Pa. 380 (1882).

50. *Commonwealth v. Jones*, 297 Pa. 326, 146 A. 905 (1929).

51. *Commonwealth v. Frazier*, 411 Pa. 195, 191 A.2d 369 (1963); *Commonwealth v. Bishop*, 285 Pa. 49, 131 A. 657 (1926) (both homicide prosecutions).

52. *Gray v. Commonwealth*, 101 Pa. 380 (1882).

53. The facts fit those of *Gray*.

In those jurisdictions requiring that the additional evidence be independently probative on the issue of corpus delicti, there is a further split of authority on the question of whether this evidence must go to every definitional element of the crime to meet the sufficiency requirement for admitting the defendant's confession. *Forté v. United States* and, following it, *Ercoli v. United States* represent a line of federal cases holding that the criminal agency constituent of corpus delicti must be established by independent evidence of each definitional element of the crime charged.⁵⁴ In *Forté*, the court held that, on a charge of transporting a motor vehicle in interstate commerce knowing it to have been stolen, scienter is an element of the corpus delicti and must be proven independent of the confession.⁵⁵ In *Ercoli*, the court's statement of the elements of the corpus delicti of negligent homicide was taken directly from the statutory definition of the elements of the crime.⁵⁶ In *State v. Basham*, an Oklahoma court reversed the defendant's burglary conviction because the evidence outside the defendant's confession established only that property had been stolen but failed to establish the specific definitional elements of burglary.⁵⁷ In *State v. Zwieroski*, the defendant's conviction for breaking and entering at night was reversed because the night element of the crime was established only by the defendant's confession.⁵⁸

The alternative interpretation of the corpus rule would seem to require only that every element of the crime be established by the independent evidence in conjunction with the confession. The United States Supreme Court in *Opper v. United States*, after reviewing the divergent federal decisions on this question, determined the better rule to be that, although the prosecution must introduce substantial independent evidence, it need establish independently only those elements of the offense not established by the confession.⁵⁹

Although the latter rule has the support of the United States Supreme Court and many American jurisdictions,⁶⁰ it is questionable whether this interpretation is available to the Pennsylvania courts since Pennsylvania's corpus rule requires that the jury make a final determination on corpus delicti without considering the defendant's confession. Whether, however, Pennsylvania does make the more stringent evidentiary requirement is left in some doubt by the body of case law. Although the requirement of inde-

54. *Ercoli v. United States*, 131 F.2d 354, 357 (D.C. Cir. 1942); *Forté v. United States*, 94 F.2d 236, 242 (D.C. Cir. 1937).

55. 94 F.2d at 244.

56. 131 F.2d at 357.

57. 340 P.2d 461 (Okla. 1959).

58. 368 Mich. 56, 117 N.W.2d 179 (1962).

59. 348 U.S. 84, 93 (1954).

60. See cases cited at note 81 *infra*.

pendent evidence has been stated as proof "that the *crime charged* was committed by someone,"⁶¹ it has also been stated as requiring proof of "*someone's criminality*" as the source of the injury,⁶² proof that the injury "resulted from a *felonious act*,"⁶³ proof, in a homicide prosecution, that "the death was caused by a beating, gunshot or other circumstance indicating a felonious act."⁶⁴

Whether proof of a "felonious act" or "someone's criminality" requires independent evidence establishing every element of the specific crime charged is not clearly indicated in the Pennsylvania cases. The corpus delicti of larceny has been held established by evidence of the loss of property plus evidence of "human agency"; no mention was made of intent.⁶⁵ The corpus delicti of receiving stolen goods has been held established by evidence that property identified by the owner was in the defendant's possession; no mention was made of "reasonable cause" to know the goods were stolen.⁶⁶ Evidence of a third party's illegal possession of the narcotic has been held to establish the corpus delicti of unlawful sale of opium.⁶⁷ Birth of a child to an unwed mother was said to establish the corpus delicti of criminal adultery.⁶⁸ It does seem clear that in a homicide prosecution, evidence establishing the particular grade of felonious homicide is not required; thus, in prosecutions for first degree murder, the corpus delicti of the crime is established by proof that the deceased was the victim of some degree of felonious homicide; the grade of the offense can apparently be established by the confession.⁶⁹ In *Commonwealth v. Homeyer*, a prosecution for first degree murder, evidence that the severed head of the defendant's wife was found encased in concrete in the defendant's basement was found to be sufficient proof of corpus delicti.⁷⁰

It is submitted that in prosecutions for homicide and certain

61. *Commonwealth v. Lettrich*, 346 Pa. 497, 503, 31 A.2d 155, 157 (1943) (emphasis added).

62. *Commonwealth v. Turza*, 340 Pa. 128, 134, 16 A.2d 401, 404 (1940) (emphasis added).

63. *Commonwealth v. Lettrich*, 346 Pa. 497, 502, 31 A.2d 155, 158 (1943); *Commonwealth v. Puglise*, 276 Pa. 235, 238, 120 A. 401, 402 (1923) (emphasis added).

64. *Commonwealth v. Ross*, 403 Pa. 358, 368, 169 A.2d 780, 785 (1961).

65. *Commonwealth v. Ferguson*, 162 Pa. Super. 199, 56 A.2d 360 (1948).

66. *Commonwealth v. Gold*, 155 Pa. Super. 364, 38 A.2d 486 (1944).

67. *Commonwealth v. Eng Chung*, 150 Pa. Super. 445, 28 A.2d 710 (1942).

68. *Commonwealth v. Dolph*, 164 Pa. Super. 415, 65 A.2d 253 (1949).

69. See *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953); *Gray v. Commonwealth*, 101 Pa. 380 (1882).

70. 373 Pa. 150, 92 A.2d 743 (1953).

other crimes, Pennsylvania courts have interpreted the requirement of independent evidence establishing the criminal agency element of *corpus delicti* to mean that the prosecution must produce evidence that someone committed a crime "something like" the crime charged. Such a rule may be a practical necessity if the confession cannot be relied upon to establish any element of the crime; this is particularly true where the complete separation of agency and identity is impossible, e.g., where the injury is not a tangible one, as in income tax evasion,⁷¹ where the nature of the crime makes the identity of the "someone" who committed it an essential element, as in embezzlement;⁷² or where scienter or specific intent is a material element of the crime.⁷³ It is unclear, however, whether the mitigation of a "something like" requirement is the general Pennsylvania rule; is an exception to a more strict elements rule, applicable only with respect to certain crimes;⁷⁴ or is an "exception" employed in certain cases where an appellate court believes that the application of a stricter interpretation to the particular fact situation would work an injustice.⁷⁵

The Pennsylvania *corpus delicti* rule establishes sufficiency requirements at two stages of the trial procedure: at the point where the prosecution seeks to have admitted into evidence the defendant's confession and as a first step in the jury determination as to the defendant's guilt. With respect to the first, the kind and quantum of independent evidence required before the defendant's confession can be admitted has been interpreted by the Pennsylvania courts as requiring something less than independently probative evidence, something less than proof of all elements of the crime, and something less than evidence sufficient to convince a jury beyond a reasonable doubt. In practice, Pennsylvania's rule regarding admissibility seems to be very much in line with the majority of other jurisdictions which, in general, require some evidence⁷⁶ of probative value, additional to the confession, which relates to and tends to establish *corpus delicti*.

71. See *Smith v. United States*, 348 U.S. 147 (1954).

72. See *People v. Fronk*, 133 Cal. App. 440, 24 P.2d 508 (1927).

73. See *Forte v. United States*, 94 F.2d 236 (D.C. Cir. 1937); *State v. Basham*, 340 P.2d 461 (Okla. 1959).

74. See *State v. Romo*, 66 Ariz. 174, 185 P.2d 757 (1947). But see *State v. Cope*, 240 N.C. 244, 81 S.E.2d 773 (1954).

75. That it is the existence of a confession that motivates such an interpretation is suggested by the strict adherence by the courts in non-confession cases to the requirement that the prosecution establish by something more than inference every element of the crime. See, e.g., *Commonwealth v. Simpson*, 436 Pa. 549, 260 A.2d 751 (1970).

76. The distinction between the requirements of "some" evidence and "substantial" evidence would appear to be purely semantic. See *Forte v. United States*, 94 F.2d 236 (D.C. Cir. 1937); Compare *Parker v. State*, 228 Ind. 1, 88 N.E.2d 556 (1949) and *People v. Cuzzo*, 292 N.Y. 85, 54 N.E.2d 20 (1944) with *Solar v. United States*, 94 A.2d 34 (D.C. Ct. App. 1953) and *State v. Bowman*, 294 Mo. 245, 243 S.W. 110 (1922).

IV. JURY DETERMINATION

The second element of the Pennsylvania corpus rule, as it is stated by the courts, imposes on the prosecution a much heavier burden than that imposed in any other jurisdiction: to provide independently, without reference to the defendant's confession or admissions, sufficient evidence of corpus delicti to convince the jury beyond a reasonable doubt that the crime was committed.⁷⁷ In any case where corpus is an issue, the court is required to instruct the jury that it must first make a determination as to corpus, without considering the confession, and then may consider the confession on the question of the defendant's guilt.⁷⁸ Failure to give this instruction in an appropriate case has been held reversible error,⁷⁹ and an instruction that properly states the law but might be misunderstood by the jury with respect to what evidence can be considered in the determination of corpus has also been held to constitute reversible error.⁸⁰ In every other jurisdiction requiring independent evidence, a burden of this weight is specifically negated; these courts holding that the independent evidence need not alone establish corpus delicti but that the jury, considering the confession and the additional evidence, must find beyond a reasonable doubt that the crime was committed and that the accused committed it.⁸¹

In practice, the court's determination as to admissibility of the confession is little more than a device for eliminating cases where the prosecution blatantly fails to meet any burden of proof. Theoretically, this has no effect on blunting Pennsylvania's very

77. Cases cited at note 17 *supra*. It would seem that the jury is to consider, in making its determination as to corpus, not only the prosecution's evidence but also any contradictory evidence or inference presented by the defense. *Commonwealth v. Oister*, 201 Pa. Super. 251, 191 A.2d 851 (1963) was the first case to speak specifically to this point. There, testimony presented by the defense and cross-examination of the prosecution's expert witness challenged his conclusion as to the incendiary origin of the fire defendant stood accused of having started. The court held that the contradictory explanations as to the criminal agency element of corpus delicti were for the jury. 201 Pa. Super. at 256, 191 A.2d at 853. *But see Commonwealth v. Brusky*, 219 Pa. Super. 54, 57, 280 A.2d 826, 828.

78. *E.g.*, *Commonwealth v. Puglise*, 276 Pa. 235, 120 A. 401 (1923); *Commonwealth v. Oister*, 201 Pa. Super. 251, 191 A.2d 851 (1963).

79. *Commonwealth v. Brusky*, 219 Pa. Super. 54, 280 A.2d 826 (1971).

80. *Commonwealth v. Frazier*, 411 Pa. 195, 191 A.2d 369 (1963); *Commonwealth v. Puglise*, 276 Pa. 235, 120 A. 401 (1923).

81. *E.g.*, *Forte v. United States*, 94 F.2d 236 (D.C. Cir. 1937); *State v. Hernandez*, 83 Ariz. 279, 320 P.2d 467 (1958); *State v. Doucette*, 147 Conn. 95, 157 A.2d 487 (1959); *Parker v. State*, 228 Ind. 1, 88 N.E.2d 556 (1949); *People v. Conroy*, 287 N.Y. 201, 38 N.E.2d 499 (1941); *State v. Weldon*, 6 Utah 2d 372, 314 P.2d 353 (1957).

strict corpus requirement since the court's determination is not conclusive on the issue of sufficiency,⁸² and it is not until the jury makes its determination that the corpus rule is actually effectuated. It is contended, however, that the effectiveness of a corpus delicti requirement at this stage of trial procedure is negligible and any protection it affords a defendant is illusory.

First, although it is universally agreed that it is the responsibility of the judge to determine what evidence the jury shall hear and the responsibility of the jury to make determinations of fact, situations where the competence of evidence which is unquestionably relevant depends on some preliminary determination of fact have resulted in very real procedural dilemmas. Where the factual determination coincides with an ultimate fact for the jury, the problems created are multiplied.⁸³ The traditional solution is to require the judge to determine the preliminary fact;⁸⁴ at the other extreme would be to require the judge to admit the evidence unconditionally and leave the question of whether or not to consider it to the jury. With respect to its corpus rule, Pennsylvania's solution is to require a preliminary determination by the judge as to sufficiency to admit a defendant's confession then a resubmission of the issue of sufficiency, now in terms of a factual determination, to the jury as a prerequisite to their consideration of the confession.⁸⁵ In effect, the jury is being asked to make a decision on the admissibility of evidence. Such a practice assumes, first, that the decision of the trial judge is not at all motivated by his awareness that final responsibility for the determination is on the jury.⁸⁶ It further assumes that the preliminary determination of the judge will have no influence on the jury's later decision.⁸⁷ If this assumption be unwarranted, such influence would be particularly damaging where, as in the determination as to corpus, the standards for these two decisions are distinctly different. Lastly, it assumes that the jury is both willing and able to make the kind of discriminations inherent in the enforcement of exclusionary rules of evidence. As McCormick notes, juries are intent mainly on reaching their verdict in this case in accord with what they believe to be true rather than in enforcing the long term policies of evidence law. . . . [W]hen a dispute about a preliminary conditioning fact is not reserved for the judge but is left to the jury, the exclusionary rule is likely to be disregarded.⁸⁸

82. *Commonwealth v. Brusky*, 219 Pa. Super. 54, 280 A.2d 826 (1971).

83. See generally Morgan, *Functions of Judge and Jury in the Determination of Preliminary Questions of Fact*, 43 HARV. L. REV. 165 (1929) [hereinafter cited as Morgan].

84. *State v. Lee*, 127 La. 1077, 54 So. 356 (1911).

85. *Gray v. Commonwealth*, 101 Pa. 380 (1882). See cases cited at note 17 *supra*.

86. Morgan, *supra* note 83, at 176.

87. See *State v. Lee*, 127 La. 1077, 54 So. 356 (1911).

88. C. MCCORMICK, EVIDENCE § 53 at 123, 125 (1954).

The most obvious and difficult problem created by this procedure is that it asks a jury, in determining whether there is sufficient evidence that a crime was committed, to ignore the defendant's confession that he committed this crime. "The naive assumption that prejudicial effects can be overcome by instructions to the jury . . . all practicing lawyers know to be unmitigated fiction."⁸⁹ In striking down a similar New York procedure whereby the jury was asked to make a determination as to voluntariness before considering a confession,⁹⁰ Mr. Justice White, speaking for the Supreme Court, noted that not only may a jury be unwilling to disregard evidence they find relevant, but "[i]f there are any lingering doubts about the sufficiency of the other evidence, does the jury unconsciously lay them to rest by resort to the confession?"⁹¹ The same point was made in *Bruton v. United States* with respect to instructions to the jury to disregard a co-defendant's confession. The Court said, regarding reliance on limiting instructions, "there are some contexts in which the risk that the jury will not, or cannot follow instructions is so great . . . that the practical and human limitations of the jury system cannot be ignored."⁹² Mr. Justice White, dissenting to the decision with regard to a co-defendant's confession, conceded that the confession of the defendant himself is "the most probative and damning evidence that can be admitted against him. . . . Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so."⁹³

Although it is not suggested that the corpus delicti issue has the constitutional overtones of the questions dealt with in these cases, the recognition of the problem of allowing the jury to hear evidence admitted conditionally, the limitations of "disregard" instructions, and the irrevocably damning influence of a confession are certainly applicable to the Pennsylvania procedure with respect to corpus delicti. One commentator concludes that arguments for departure from the orthodox rule that questions of ad-

89. *Krulwitch v. United States*, 336 U.S. 440, 453 (1949) (concurring opinion).

90. The New York procedure for determining voluntariness required the trial judge to make a preliminary determination; if the evidence presented a "fair question" as to the voluntariness of the confession, the confession was to be admitted. The jury was then to be required to make its own determination on voluntariness under instructions that, if it found the confession involuntary, the confession was to be disregarded entirely. See *Jackson v. Denno*, 378 U.S. 368 (1963).

91. *Jackson v. Denno*, 378 U.S. 368, 388 (1963).

92. 391 U.S. 123, 135 (1968).

93. *Id.* at 139, 140 (dissenting opinion).

missibility be left to the court "strike at the validity of the exclusionary rules themselves."⁹⁴ The suggestion is that a procedural rule allowing the jury to decide whether or not to consider evidence is, in effect, a way of getting to the jury all evidence relevant to the issues while still verbally upholding the judicially made evidence rules.

V. APPELLATE REVIEW

Although appellate courts are admirably suited to review questions of admissibility, any review of factual findings by a jury is severely circumscribed: "Since the issue . . . was submitted to the jury with appropriate instructions we would normally be precluded from reviewing or disturbing the inferences of fact drawn from the evidence by the jury."⁹⁵ One effect of Pennsylvania's rule making the final determination of corpus delicti a question of fact for the jury rather than a question of admissibility for the court would seem to be the concomitant limitation on appellate review. Where there is any relevant evidence to support a jury's guilty verdict, an appellant challenging the sufficiency of the evidence confronts the appellate court's unwillingness to impinge on the province of the jury as finders of fact. Where the circumstance creating the possibility of prejudice is inherent in the procedure, an appellate court would seem to be faced with the dilemma of ignoring the possible prejudice or overturning the entire procedure. When Pennsylvania courts have been faced with appeals challenging the sufficiency of the evidence of corpus delicti, the response in some cases has been to ignore the question of whether the independent evidence alone was sufficient for the jury's determination. These courts review the sufficiency of the evidence for admission of the confession and then review the sufficiency of all the evidence, the confession and any additional evidence, in support of a guilty verdict.⁹⁶

That the Pennsylvania courts do not demand adherence to this very strict standard of proof is suggested by several appellate decisions. In *Commonwealth v. Coontz*, affirming the defendant's homicide conviction, the court stated, "When testimony points to an unlawful killing, though it may also indicate accident or suicide, statements of the accused then become admissible to show there was an unlawful slaying. . . ."⁹⁷ In *Commonwealth v. Marshall*, again affirming a homicide conviction, the court said,

Considerable evidence was presented in support of the theory of accidental death. . . . This evidence, along with the

94. *Morgan*, *supra* note 83, at 189.

95. *Mortensen v. United States*, 322 U.S. 369, 374 (1944).

96. See *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953); *Commonwealth v. Turza*, 340 Pa. 128, 16 A.2d 401 (1940).

97. *Commonwealth v. Coontz*, 288 Pa. 74, 79, 135 A. 538, 539 (1926).

confession of the defendant that he had choked his victim, was passed on by the jurors who, by their verdict, very properly refused to accept the theory that deceased had died from an accidental cause.⁹⁸

In *Commonwealth v. Dyell*, affirming the trial court's ruling to sustain the defendant's demurrer to the evidence, the court held that the Commonwealth had failed to provide "clear proof of a criminal death."⁹⁹ Here, the evidence consisted of testimony as to the finding of the skeleton of the victim in an isolated woods covered by branches and the defendant's false denial that he knew nothing about the body; medical evidence was unable to establish the cause of death. The only other evidence was the defendant's statement that he had been with the victim and that, in running away from him, she must have fallen; he admitted finding her body and hiding it. The court distinguishes this case from others cited earlier on the basis of the absence of a confession: "In no case where both clear proof of a criminal death and a confession, or incriminating admissions, were lacking was the Commonwealth's case ruled sufficient."¹⁰⁰ The court here seems to forget that the existence of a confession is supposed to have no effect on the burden of proving a criminal death.

When the appellate courts do discuss the sufficiency of the evidence of corpus delicti in a particular case, the result seems to be more an attempt to justify a verdict than to review it. In *Commonwealth v. Homeyer*, the court provides an extensive list of suspicious acts, including false statements, flight, fear, and manifestations of mental distress, from which the defendant's guilt can be inferred,¹⁰¹ from which inference the fact of some crime can be inferred, from which inference the fact of the crime charged can be inferred. By application of this reasoning, evidence of the defendant's conflicting statements to others was held to constitute evidence of the corpus delicti;¹⁰² disposing of a body was held to constitute evidence of a murder;¹⁰³ the defendant's forging his

98. *Commonwealth v. Marshall*, 287 Pa. 512, 519, 135 A. 301, 303 (1926).

99. 399 Pa. 563, 569, 160 A.2d 448, 450 (1960).

100. *Id.* at 569, 160 A.2d at 450. *But cf.* *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953); *Commonwealth v. Jones*, 297 Pa. 326, 146 A. 905 (1929).

101. 373 Pa. 150, 158, 92 A.2d 743, 744 (1953). *Id.* at 158, 159, 92 A.2d at 744.

102. *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953); *Commonwealth v. Lettrich*, 346 Pa. 497, 31 A.2d 155 (1943); *Commonwealth v. Bishop*, 285 Pa. 49, 131 A. 657 (1926).

103. *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953); *Commonwealth v. Jones*, 297 Pa. 326, 146 A. 905 (1929); *Commonwealth v. Marshall*, 287 Pa. 512, 135 A. 301 (1926).

wife's name to withdraw money from her savings account prior to her death was held to constitute evidence of her murder;¹⁰⁴ inconsistency of statements to the police was held to constitute evidence of the corpus delicti,¹⁰⁵ attempts to "divert suspicion" were held evidence of the fact of a murder.¹⁰⁶ Such reasoning is specious logic and questionable policy. "The corpus delicti cannot be based on an inference."¹⁰⁷ Since the purpose of the requirement that corpus delicti be independently proven is to avoid convicting for a "crime" the only proof of which is a defendant's confession, to base a finding that the crime was committed on other "guilty behavior" of the defendant would seem to subvert the purpose of the requirement. As has been noted by courts in other jurisdictions, suspicious behavior may point to possible guilt of some offense but is not evidence of any particular offense.¹⁰⁸ Disposing of a body may show guilty knowledge but is no evidence of an unlawful death;¹⁰⁹ the defendant's having forged letters purporting to have been written by the alleged victim is not evidence that a murder was committed.¹¹⁰

The disposition of corpus questions by the appellate courts suggests the difficulties and inconsistencies inherent in the Pennsylvania corpus delicti rule as it is enunciated. The rule as stated would impose, in some cases, a nearly impossible burden on prosecutors, but the impossibility of meeting it is effectively eliminated by the equally impossible task imposed on the jury. It is questionable, however, whether this method of arriving at a workable corpus requirement is either acceptable or effective.

VI. CONCLUSION

Underlying any corpus rule are the policies of avoiding convictions based on confessions either coerced or motivated by some pathological disposition and discouraging investigators from relying for convictions on naked extra-judicial confessions. At one time, a very strict corpus requirement may have been not only justified but necessary. At its inception, when confessions were often not strictly voluntary and defendants could regularly be executed upon conviction for any number of crimes, discovery that a crime had never been committed could easily come too late for any apologies to be made to the convicted criminal. Although the basic policy discouraging a conviction based solely on a confession

104. *Commonwealth v. Homeyer*, 373 Pa. 150, 92 A.2d 743 (1953).

105. *Commonwealth v. Marshall*, 287 Pa. 512, 135 A. 301 (1926).

106. *Commonwealth v. Letrich*, 346 Pa. 497, 31 A.2d 155 (1943).

107. *People v. Zwierowski*, 368 Mich. 56, 60, 117 N.W.2d 179, 181 (1962).
Accord *People v. Folsom*, 268 App. Div. 350, 51 N.Y.S.2d 733 (1944).

108. *Forte v. United States*, 94 F.2d 236 (D.C. Cir. 1937). *See* *State v. Weldon*, 6 Utah 2d 372, 314 P.2d 353.

109. *State v. Johnson*, 83 P.2d 1010 (Utah, 1938).

110. *Parker v. State*, 228 Ind. 1, 88 N.E.2d 556 (1949).

would seem to justify some requirement of independent evidence, circumstances today would not seem to warrant a very strict requirement. The problem of coerced confessions is separately dealt with by the law on voluntariness, and increased sophistication on the part of both investigators and jurors as to the psychological motivations possibly underlying a confession probably help mitigate some of the problems of pathological confessions.

The corpus requirement that Pennsylvania seems to have, in practice, requires some evidence outside the confession tending to establish *corpus delicti*. The jury, in actuality, probably cannot help but make its determination on both *corpus delicti* and the defendant's guilt considering all the evidence presented. The Pennsylvania practice, much in keeping with the rule in the majority of jurisdictions, would seem to further the valid policies of the requirement without imposing senselessly restrictive burdens on the prosecution. It is questionable, however, whether the best way to reach the result is through this confusing complex of contradictory rules and mitigating interpretations, through this morass of preliminary determinations, varying sufficiency requirements, limiting instructions and appellate justifications.

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