tempted battery[29] the specific intent required for aggravated assault is a present desire to consummate a battery. But in the conditional intent situation, the primary objective of the person making the threat is to secure performance of a condition. This objective is manifested by his forbearing to consummate the battery in order to give the threatened party an opportunity to perform the condition and by non-execution of the battery when the condition is performed. This delay, when considered in the light of the objective, indicates that during the time allowed for performance of the condition there is no present desire to commit a felonious battery and therefore no specific intent.[30]

Thus, it is submitted that the third view, adopted in the principal case, which would allow the imposition of punishment for aggravated assault, is erroneous inasmuch as conditional intent does not satisfy the specific intent requirement. It would further appear that the second view, which would allow a conviction for common[31] but not for aggravated assault, is the correct and more logical doctrine.

EVIDENCE—EXTRAJUDICIAL CONFESSION INADMISSIBLE WITHOUT CORROBORATIVE EVIDENCE TO ESTABLISH CORPUS DELICTI

St. Louis v. Watters, 289 S.W.2d 444 (Mo. App. 1956)

Defendant, after reporting to the police that he had been robbed, confessed extrajudicially that the report was false and that he had used the money which was said to have been stolen to pay bills. His conviction of violating a city ordinance, which makes it a misdemeanor to knowingly submit a false report of a law violation to a police officer of the city,[1] was based on his uncorroborated confession. In reversing the conviction, the court of appeals held that since the corpus delicti had not been established the confession could not be introduced as evidence of guilt.[2]

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29. State v. Morgan, 25 N.C. 186 (1842); Perkins, *supra* note 28, at 344.

30. Intent has been defined more broadly than a desire to accomplish a certain result. For example, it has been said that advertence to a consequence which will necessarily result from an act may also constitute intent. Cook, *Act, Intention and Motive in the Criminal Law*, 26 YALE L.J. 645, 657-58 (1917). It is submitted, however, that the preceding analysis is in no way affected by the more broadly stated definition. When an actor is waiting to ascertain whether his demanded condition will be performed he surely can have no present advertence to consequences of an act for the simple reason that he has not yet acted.

31. It is to be noted in this regard that logical consistency would allow conviction for common assault only in those states where the unlawful placing of another in apprehension constitutes that crime, see CLARK & MARSHALL, CRIMES 268-69 (5th ed. 1952). In those states where an actual intention on the part of the actor to commit a battery is required for common assault, *ibid.*, it would appear that an adoption of the analysis suggested in this comment would logically require that a conditional intent be held not to satisfy even the intent requirement for common assault.

1. ST. LOUIS REV. CODE c. 46, § 23 (1948).

2. St. Louis v. Watters, 289 S.W.2d 444 (Mo. App. 1956).

In order to protect an accused from convictions based entirely upon untrue confessions, most courts have established a rule that an uncorroborated extrajudicial confession will not alone sustain a conviction.[3] In a few jurisdictions, the required corroboration may consist of any evidence which tends to support the trustworthiness of the confession.[4] The great majority, however, have adopted a more stringent rule requiring that the corroboration consist of independent proof tending to establish the corpus delicti, *i.e.*, the fact of the actual commission of the crime charged.[5] Theoretically, this rule could involve proof of three elements: first, that a specific loss or injury occurred; second, that the loss was caused by a criminal agency, rather than, for example, an accident; and third, that the accused be identified as the perpetrator of the criminal act.[6] Most jurisdictions, however, including Missouri,[7] consider the corpus delicti as encompassing only the first two elements which, taken together, constitute the commission of a crime by someone.[8]

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3. Isaacs v. United States, 159 U.S. 487 (1895); State v. Capotelli, 316 Mo. 256, 292 S.W. 42 (1926); see Warszower v. United States, 312 U.S. 342 (1941); 7 WIGMORE, EVIDENCE §§ 2070-71 (3d ed. 1940). The rule, in addition to preventing the use of coerced confessions (State v. Capotelli, *supra* at 262, 292 S.W. at 44), also protects those persons of unpredictable or unstable temperament, defective mentality, extreme timidity, or those singularly ignorant of their legal rights who, fearing the consequences of remaining silent, may revert to making a false confession. See Note, 33 NEB. L. REV. 495, 503 (1954).

Professor Wigmore attributes the current restrictions imposed upon the admissibility of extrajudicial confessions to an inheritance from England, resulting from conditions prevalent in the British common law during the eighteenth and early nineteenth centuries, viz. (1) the character of the "lower-class" individual charged with petty forms of property-crime, whose general attitude was usually one of meek acquiescence to those in authority, regardless of the merits of the case; (2) the over-cautious attitude of the transient Nisi Prius judges who preferred to exclude the doubtful evidence in its entirety rather than suffer the inconvenience of having to delay for purposes of subsequent consultation with their professional associates; and (3) the common-law disqualification of the accused to testify on his behalf or to have counsel. 3 WIGMORE, *op. cit. supra* § 865.

This rule has been held to be equally applicable to extrajudicial admissions. Smith v. United States, 348 U.S. 147, 154 (1954); Opper v. United States, 348 U.S. 84, 90 (1954); State v. Cooper, 358 Mo. 269, 271, 214 S.W.2d 19, 20 (1948). For the distinction between confessions and admissions, see Gulotta v. United States, 113 F.2d 683, 686 (8th Cir. 1940).

The corroborative requirement, however, is not applicable to an infra-judicial confession, which is treated as a plea of guilty. See 7 WIGMORE, *op. cit. supra* note 3, § 2071.

Where an admission is made prior to the crime charged, there need be no corroboration. Warszower v. United States, 312 U.S. 342 (1941).

4. 7 WIGMORE, *op. cit. supra* note 3, § 2071.

5. Smith v. United States, 348 U.S. 147 (1954); Opper v. United States, 348 U.S. 84 (1954); State v. McQuinn, 361 Mo. 631, 235 S.W.2d 396 (1951); 7 WIGMORE, *op. cit. supra* note 3, § 2071. For a general discussion on the requirements for corroboration of extrajudicial confessions and admissions, see Annot., 45 A.L.R.2d 1316 (1956).

6. MCCORMICK, EVIDENCE § 110 (1954); 7 WIGMORE, *op. cit. supra* note 3, § 2072.

7. State v. Hardy, 276 S.W.2d 90 (Mo. 1955); State v. Fitzsimmons, 338 Mo. 230, 235, 89 S.W.2d 670, 673 (1935).

8. 7 WIGMORE, *op. cit. supra* note 3, § 2072.

Evidence, which is offered to satisfy the rule that an extrajudicial confession must be corroborated by independent evidence tending to establish the corpus delicti, need not be excluded merely because it would also tend to connect the accused with the crime;[9] nor does the rule preclude use of evidence secured through exploitation of material in the confession.[10] Furthermore, the corroborative evidence need not establish the existence of the corpus delicti either beyond a reasonable doubt or by a preponderance of proof.[11] The corroborative evidence requirement means merely that the confession alone is insufficient to sustain a conviction without some extrinsic proof *tending* to show that the confession is true and that a crime has actually been committed.[12] The general rule, which is followed in Missouri,[13] is that once such extrinsic evidence is introduced, *both* the evidence and the confession may be weighed conjunctively in determining whether the corpus delicti has been sufficiently established.[14]

9. People v. Franklin, 415 Ill. 514, 114 N.E.2d 661 (1953).

10. See MCCORMICK, EVIDENCE 233 (1954).

11. Davena v. United States, 198 F.2d 230 (9th Cir.), *cert. denied*, 344 U.S. 878 (1952); United States v. Kertess, 139 F.2d 923 (2d Cir.), *cert. denied*, 321 U.S. 795 (1944); Bollinger v. State, 208 Md. 298, 117 A.2d 913 (1955). *But see* Commonwealth v. Bishop, 285 Pa. 49, 131 Atl. 657 (1926). For a discussion of the quantum of independent proof required, see Note, 103 U. PA. L. REV. 638, 659 (1955).

12. See 2 WHARTON, CRIMINAL EVIDENCE § 394 (12th ed., Anderson 1955). That this rule also applies to extrajudicial admissions was pointed out by the Supreme Court in Opper v. United States, 348 U.S. 84, 93 (1954), where it was stated: "It is sufficient if the corroboration supports the *essential facts admitted* sufficiently to justify a jury inference of their truth." (Emphasis added.) In a similar decision rendered the same day the Court removed any previous uncertainties regarding the amount of corroboration required for extrajudicial admissions by equating the quantum of independent proof to that necessary for extrajudicial confessions. Smith v. United States, 348 U.S. 147, 156 (1954). See also Annot., 99 L. Ed. 110, 113 n.7 (1955).

13. State v. McQuinn, 361 Mo. 631, 235 S.W.2d 396 (1951); State v. McGuire, 327 Mo. 1176, 1183, 39 S.W.2d 523, 525 (1931); State v. Skibiski, 245 Mo. 459, 463, 150 S.W. 1038, 1039 (1912). The rule that full proof of the corpus delicti, independently of the confession, is not required, applies with equal force to admissions. St. Louis v. Washington, 223 S.W.2d 858, 863 (Mo. App. 1949); St. Louis v. Simon, 223 S.W.2d 864, 869 (Mo. App. 1949).

14. MCCORMICK, EVIDENCE 230 n.6 (1954). The federal rule was stated in Smith v. United States, 348 U.S. 147, 156 (1954): "All elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for independent evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused." See also Opper v. United States, 348 U.S. 84, 93 (1954); Thompson v. United States, 233 F.2d 317 (6th Cir. 1956).

In regard to the order of proof, the general rule is that independent proof of the corpus delicti should precede the introduction of the extrajudicial confession. Note, 103 U. PA. L. REV. 638, 657 (1955). It is not error, however, if the trial judge exercises his discretion and allows the order of this presentation to be reversed, provided that sufficient corroborative evidence is introduced at some later point in the trial. People v. McWilliams, 117 Cal. App. 732, 4 P.2d 601 (1931); State v. Arndt, 143 S.W.2d 286 (Mo. 1940); State v. Thompson, 333 Mo. 1069, 64 S.W.2d 277 (1933); Taylor v. State, 191 Tenn. 670, 235 S.W.2d 818 (1950), *cert. denied*, 340 U.S. 918 (1951).

After corroborative evidence has been introduced, it is for the trial judge to rule whether such proof has sufficiently corroborated the confession and, if not,

The instant case provides a unique illustration of how a strict application of the independent corroborative evidence rule could work to preclude the use of a confession to support a conviction even though the defendant were guilty. The offense charged consisted of knowingly making a false robbery report. Under an application of the preceding rules, it becomes apparent that in order to establish the corpus delicti, the city would have had to introduce independent evidence tending to show that the report was false.[15] Dictum in the principal case suggested that there were matters in the confession, such as the payment of bills, which could have been investigated and which might have furnished the necessary corroboration.[16] It is conceivable that, had such evidence been presented, the court would have found sufficient corroboration and thereby allowed the use of the confession, in addition to extrinsic evidence, to establish the corpus delicti. It is submitted, however, that unless the money had been marked or was otherwise readily identifiable the mere fact that bills were paid would not have provided sufficient corroboration, inasmuch as such evidence would have very little if any probative value in tending to establish that a crime had actually been committed. Furthermore, assuming that the confession may not have contained any verifiable statement which would have corroborated the "essential facts admitted,"[17] the extreme improbability of being able to secure independent evidence tending to show that the defendant was *not* robbed is obvious.

The difficulties facing the prosecution as a result of the rule requiring independent corroborative evidence tending to establish the corpus delicti have been obviated or compromised by other jurisdictions in a variety of ways. In a few jurisdictions the guilt of an accused can be established by his uncorroborated extrajudicial confession.[18] Some courts have held that the general rule applies to serious

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to exclude the confession from evidence. Once the confession is admitted, however, the jury must determine for itself whether the corroboration has been sufficient. It is obvious that the jury cannot find the defendant guilty beyond a reasonable doubt unless they also believe that a crime has actually been committed. 7 WIGMORE, *op. cit. supra* note 3, § 2073.

15. Considering the element of force required to consummate a robbery, it is inconceivable that the defendant could have been robbed and not have realized this fact. By similar logic, the absence of any such robbery could not pass unnoticed by the defendant. Therefore, it appears that if the city proved that no robbery had occurred, it would concurrently establish defendant's knowledge that his report was false. Thus, that element of the corpus delicti which requires proof tending to establish a criminal agency would be satisfied by proving that no robbery had occurred.

16. 289 S.W.2d at 446. Defendant also had been shown pictures at the Bureau of Identification and had partially identified a man as the one who committed the purported hold-up. Cross-examination brought out that no investigation of the man so identified had been undertaken. 289 S.W.2d at 445.

17. Opper v. United States, 348 U.S. 84, 93 (1954).

18. Commonwealth v. Kimball, 321 Mass. 290, 73 N.E.2d 468 (1947); Potman v. State, 259 Wis. 234, 47 N.W.2d 884 (1951); United States v. So Fo, 23 Philippine 379 (1912). It would appear that those courts which have disregarded the

or high crimes, but that in cases of misdemeanors an uncorroborated confession will be sufficient to sustain a conviction.[19] In New York it is provided by statute that a conviction for disorderly conduct may be based upon an uncorroborated confession.[20] In addition, it has been held that where an element of the corpus delicti consists of a negative factor which is peculiarly within the knowledge of the accused, a confession is sufficient to establish that factor.[21]

The problem presented by the principal case points to the necessity of legislative and judicial re-evaluation of any rule which rigidly requires corroboration regardless of unique elements of an offense that might render corroboration virtually impossible. In this regard, both the legislatures and the courts should give careful attention to the suggestions offered by other states. For example, a legislature might well enact a statute specifying that an uncoerced, uncorroborated confession would be sufficient to sustain a conviction when the circumstances of the offense would place upon the prosecution the burden of introducing evidence tending to prove a negative element exclusively within the knowledge of the accused. In light of the purpose of the rule requiring corroboration, however, it is submitted that it would be questionable whether such a statute should be made to apply to situations where it would be as difficult for the defendant to prove the affirmative as for the prosecution to prove the negative. If the adoption of such a statute is considered by the legislature, the primary objective must be the achievement of a just balance between the interest of the state in protecting accused persons from convictions based upon untrue confessions and its interest in the efficient administration of criminal justice which requires that the enforcement of the criminal laws should not be frustrated by a rigid application of a rule of evidence.

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corroborative requirement have done so in the belief that the credibility of an uncoerced confession outweighs the remote possibility that it is untrue. See 3 WIGMORE, *op. cit. supra* note 3, § 867.

19. Commonwealth v. Quick, 15 Pa. Dist. 260, 31 Pa. County Ct. 541 (1905); State v. Gilbert, 36 Vt. 145 (1863); *cf.* People v. Lowey, Horovits & Fischer, Inc., 186 Misc. 745, 60 N.Y.S.2d 145 (Magis. Ct. 1946). In England, corroboration, if required at all, appears limited to cases of murder, bigamy, or offenses involving title to property. ROSCOE, CRIMINAL EVIDENCE 38 (15th ed. 1928).

20. N.Y. CODE OF CRIM. PROC. § 901 (1939), People v. Erickson, 171 Misc. 937, 944, 13 N.Y.S.2d 997, 1005 (Magis. Ct. 1939), *rev'd on another point*, 283 N.Y. 210, 28 N.E.2d 381, *reargument denied*, 283 N.Y. 774, 28 N.E.2d 979 (1940). The court, in admitting the sworn confession made by defendant before the commissioner of investigation, held that the conflict between this provision and a general statute which required evidence other than the confession (see N.Y. CODE OF CRIM. PROC. § 395 (1939)) was to be resolved in favor of the former.

21. State v. Stone, 189 La. 567, 180 So. 411 (1938), citing 1 GREENLEAF, EVIDENCE § 79 (16th ed. 1899); *cf.* Jencks v. United States, 226 F.2d 540, 549 (5th Cir. 1955); People v. Erickson, *supra* note 20.