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Proof of the Corpus Delicti by Circumstantial Evidence Where the Body is Never Found

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The reader is forewarned that the following discussion of the use of circumstantial evidence to prove the corpus delicti is limited solely to situations involving homicide, and is restricted more particularly to those which involve the use of such evidence to prove the fact of death. Although an established definition of the corpus delicti will vary from jurisdiction to jurisdiction, the basic concept involves: (1) the occurrence, and (2) someone's criminality as the cause thereof.[1] In the case of a homicide, it is the establishment of the fact of death plus the actions of the accused as the cause thereof. The corpus delicti forms the framework upon which any successful prosecution for homicide must rest. It is incumbent upon the state to prove beyond a reasonable doubt that a death in fact has occurred and further that such death was not caused by natural occurrences, accident, or an act of the deceased.[2] Proof of the corpus delicti must be made either by direct evidence or by cogent and irresistible grounds of presumption.[3]

There seems little doubt that the rule allowing proof of the corpus delicti by circumstantial evidence in homicide cases is generally accepted both in this country and in England.[4] But it must be kept in mind that most of the cases which set forth this rule involve the use of such evidence to prove the criminal act of the accused and not the fact of death.[5] Until recently there has been little reason to question the propriety of such a rule, and the courts have quite generally enunciated it apparently with little thought that the situation would ever arise where such a rule would be applied to prove the fact of death. To date, research has revealed only three reported cases which involve the use of circumstantial evidence to prove the fact of death.[6] All three were unusual in that no trace of the deceased was found at all — in the words of Lord Goddard, "they had disappeared from the face of the earth."[7]

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[1] 7 WIGMORE, EVIDENCE § 2072 (3d ed. 1940).
[2] State v. Merrill, 72 W. Va. 500, 78 S.E. 699 (1913).
[3] State v. Flanagan, 26 W. Va. 116, 123 (1885).
[4] 7 WIGMORE, *op. cit. supra* note 1, § 2081.
[5] State v. Lucas, 103 W. Va. 743, 138 S.E. 393 (1927); State v. Toney, 98 W. Va. 236, 127 S.E. 35 (1925).
[6] People v. Scott, 176 Cal. App. 2d 458, 348 P.2d 882 (1959); Regina v. Onufrejczyk, 1 All E.R. 247 (1955); King v. Horry, N.Z.L.R. 111, 68 L.Q.Rev. 391 (1952).
[7] Regina v. Onufrejczyk, *supra* note 6, at 250.

Cases in which circumstantial evidence has been used to establish the fact of death are not wholly unknown, but they do lend themselves to classification into three groups, none of which contain the unusual fact situations of the aforementioned cases.

In the first group are the cases wherein exists direct evidence that means calculated to induce death were used upon the missing person — the classic example of this being the mutinous sailors who throw their captain overboard while at sea.[8] In this class, though circumstantial evidence is used to prove the fact of death, it is bolstered by the direct evidence as to the application of means calculated to produce death against the missing person.

The second classification would include those cases in which only portions of the body are found. A West Virginia case, *State v. Flanagan,* illustrates this situation rather clearly.[9] In that case the defendant was accused of murdering the deceased by means then unascertainable due to the condition of the body which had been almost completely consumed by fire. The court held that, although the finding of a portion of a body was in itself no more than evidence of the death of a human being, the identity of such a body could rest upon either direct or circumstantial evidence. In determining the identity of the person, circumstances relating to ownership of the burned dwelling and the person's absence without explanation were considered.

The third group contains those cases in which, although the body is never discovered, the accused has involved himself in a net of circumstances which tend to establish the criminal act, plus a confession as to the fact of death itself.[10]

Although it can be fairly said that circumstantial evidence may be used to prove the corpus delicti in cases involving homicide, this broad rule has not until recently been applied in situations where only circumstantial proof was available. There was for a time in England a feeling that no one accused of murder should be convicted unless the body of the alleged victim was produced. This view had its origin in the oft-quoted statement of Sir Matthew Hale's that, "I would never convict any person of murder or manslaughter unless the fact were proved to be done, or at least the body found dead."[11] This statement was apparently precipitated by two very

[8] R. v. Hindmarsh, 168 Eng. Rep. 387 (1792).
[9] State v. Flanagan, *supra* note 3, at 117.
[10] State v. Anderson, 10 Wash. 2d 167, 172, 116 P.2d 346 (1941).
[11] 7 WIGMORE, *op. cit. supra* note 4, at 417.

famous English miscarriages of justice: *The Warwickshire Case, circa* 1611, in which an uncle charged with the murder of his niece was convicted and subsequently hanged, only to have the lady reappear several years later very much alive,[12] and again around 1660 in *Perry's* case where the victim returned two years after his supposed murderer had been executed.[13] But though Lord Hale's statement is often cited, it does not seem to have been accepted as a rule of law in England or in the United States.[14] It does serve however to point up the inherent danger in such a situation. With this in mind we shall proceed to a discussion of the three cases in which this broad rule has been applied strictly, apparently the only convictions of murder in history founded entirely upon circumstantial evidence and lacking body, confession, or direct evidence of death.

The earliest, a 1952 New Zealand case, *King v. Horry*,[15] involved the disappearance of Horry's wife on their honeymoon trip. The wayward husband piled one inconsistency upon another until his denial collapsed of its own weight. Horry and Eileen, his wife, were married in July, 1942, and in preparation for the forthcoming wedding trip, Eileen converted all her assets into cash and several days later she and Horry supposedly left New Zealand. Horry reappeared one day later minus Eileen but richer by almost the exact amount his wife had withdrawn from her accounts. Then followed several contradictory explanations of her disappearance: of the sinking of a ship which never existed, of an agreement by which Eileen would run away with another man after her marriage to Horry, and finally of a missing letter from Eileen to Horry telling him to make up a false explanation of her disappearance. The "overwhelming inculpatory net of circumstantial evidence" in which Horry entangled himself was monumental and, after recognizing that this was the first case of a murder conviction in which all that was available to prove the death was circumstantial, the New Zealand Court of Appeals found Horry guilty of the murder of his wife. The conviction stood, absent any trace of the body, confession, or evidence of violence done. The case seems to require the establishment of three elements in order for a conviction to be had in such a situation: (1) "an overwhelming inculpatory net of circumstantial evidence;" (2) "that the fact of death should be

[12] *Ibid.*
[13] *Ibid.*
[14] 7 WIGMORE, *op. cit. supra* note 4, at 422.
[15] King v. Horry, *supra* note 6, at 611.

provable by such circumstances as render it morally certain;" and (3) such evidence should be so compelling that no rational conclusion other than the fact of death could be drawn.

The second case in point of time is a 1955 English decision *R. v. Onufrejczyk.*[16] Here, the appellant and one Sykut, a Pole, were partners in a farming enterprise which had been gradually losing money since its inception. Evidence tended to show that Sykut wished to dissolve the partnership and that he and the appellant had quarreled numerous times over the price Onufrejczyk was to pay for Sykut's share. Then on December 14, 1953, Sykut disappeared and was never heard from again. It appeared from the testimony that the appellant had gotten another to forge Sykut's signature to papers purporting to transfer the farm to him and had attempted to obtain another person to impersonate his former partner at projected meetings with a local attorney. But the most incriminating circumstances of all were the conflicting accounts he gave to explain the disappearance of his partner — Sykut had gone to see a doctor in another village; he had been taken away in the night by several men in a large black car; and he had returned to his native Poland to visit his wife. None of these explanations stood the test of investigation. In affirming the conviction by the lower court, Lord Goddard, while approving the tests of the *Horry* case, criticizes the use of the words "morally certain" as meaningless, and would substitute "such circumstances as would render the commission of the crime certain."[17] As to the presence of the net of circumstantial evidence alluded to in the *Horry* case, while no specific mention thereof is made, the general approval of the *Horry* decision would indicate its acceptance.

As pointed out before, in the *Horry* case the evidence had to be sufficiently compelling to convince the jury that no rational conclusion other than the fact of death would be warranted. It is on this and several other points that the two cases differ. First, if Lord Goddard adopts the view that the evidence may point to only one rational conclusion,[18] then his own statement that Sykut could perhaps be imprisoned behind the Iron Curtain would seem inconsistent. Secondly, the time which elapsed between the wife's disappearance in the *Horry* decision and the husband's subsequent

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[16] Regina v. Onufrejczyk, *supra* note 6.
[17] *Id.* at 249.
[18] King v. Horry, *supra* note 6, at 611.

conviction was approximately nine years, while in the *Onufrejczyk* case the time period was only twelve months. Lastly, it would seem that the *Onufrejczyk* case does not involve the same mass of circumstances which brought about the conviction of Horry, but rather that many of the circumstances would fairly support more than one conclusion. In short there is not present in the latter case the same exacting judicial rules nor the same strict evidentiary requirements as found in the first case.

The third and final case is a 1959 California decision, *People v. Scott,*[19] wherein the appellant Scott was convicted of the murder of his wife Evelyn. On May 16, 1955, Mrs. Scott disappeared from her home never to be heard from again. There was present no evidence of violence, the body was never found, and no confession was obtained from the accused. The main of the evidence used in the *Scott* case related to the prosecution's attempt to prove the state of mind of the two principals. Scott was shown to be a pauper, relying entirely upon his wife's substantial fortune and totally lacking in funds of his own. The inference was that he had pursued a plan pointed at convincing his wife's friends and relatives that she was suffering from some form of mental disturbance. There was evidence that Scott had forged his wife's signature to several checks after her disappearance and that he was making a studied attempt to gain control of her money. The one substantial difference between the action of Scott and those of Horry and Onufrejczyk is that, while the latter two fabricated various explanations for the disappearances, Scott maintained from beginning to end that his wife had run away during a short absence by himself. The second point of the state's case against Scott was an apparently successful attempt to show that Mrs. Scott was not the type of person who, suddenly and without explanation, would give up her present mode and place of living. Numerous friends testified as to her good health, both mental and physical, despite her husband's statements to the contrary. She was depicted as an apparently happy woman with a substantial fortune and many friends, but who also unfortunately had been twice divorced, twice widowed and at the time of her disappearance, married to a man who was known to have beaten her once and who obviously coveted her money. This type person, according to the court, would not suddenly leave to start life anew in another locale. The most ef-

[19] People v. Scott, *supra* note 6, at 459.

fective evidence produced to indicate that Mrs. Scott's disappearance was not of her own volition was the fact that she failed to take her glasses, without which she had difficulty seeing, and a dental plate, which she almost constantly wore. In upholding the lower court's decision the California court ruled that, "in a homicide prosecution all that is required to prove death is circumstantial evidence sufficient to convince the minds of reasonable men of the existence of the fact."[20]

The court cites with approval the *Horry* and *Onufrejczyk* cases, stating that they do not set forth any new rule of law, but rather apply established law to unique factual situations. If by established law the court means that the corpus delicti can be proved by circumstantial evidence, then the court is correct. It would seem, however, that the very uniqueness of the situation would require a new evaluation of the rule. Viewed in retrospect the cases do lay down varying degrees of proof in situations like these.

King v. Horry would ask: Has the accused involved himself in an overwhelming net of circumstances? Are the circumstances used to prove the death such as to render the fact of death morally certain? Does such evidence point but to one rational conclusion? Lord Goddard in *R. v. Onufrejczyk* would ask: Are the circumstances such as render the commission of the crime certain? The California court requires such evidence as will convince rational men of the existence of the fact.

The three cases have been decided within the last decade in three widely separated jurisdictions. Convictions have been sustained on proof of the corpus delicti by circumstantial evidence progressively decreasing in quality and weight. The three decisions may not establish a discernible trend. But in the development of this phase of circumstantial evidence the cautious position of Sir Matthew Hale may well be reconsidered in balancing the interests between the escape of the guilty and execution of the innocent.

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[20] *Ibid.*