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State v. Fields: The Definition of Driving Under the North Carolina Safe Roads Act

The 1980s have witnessed a groundswell of public indignation throughout the country over the problem of the drunken driver.[1] The North Carolina Court of Appeals' decision in *State v. Fields*[2] reflects this nationwide concern. The *Fields* court held that a defendant "drives" within the meaning of the impaired driving (DWI) provision of North Carolina's Safe Roads Act when he or she sits behind the wheel of a stationary vehicle.[3] The court of appeals based its expansive interpretation of "driving" on a previous North Carolina Supreme Court decision[4] as well as a clear expression of legislative intent regarding the issue.[5] The *Fields* decision also accords with the general policy considerations that compelled the North Carolina General Assembly to enact the Safe Roads Act in 1983.[6] This Note analyzes *Fields* and concludes that it is in accord with judicial precedent and legislative intent. It suggests, however, that in the interest of fairness the general assembly should amend the statute to provide adequate notice to North Carolina drivers.

At 1:14 a.m. on February 10, 1984, a patrolman from the Blowing Rock Police Department spotted a stopped car in the right-hand lane of a public street. He approached the car and found defendant Fields sitting behind the wheel; the car's owner stood nearby in the bushes.[7] Although the motor was running, the patrolman never saw the car move.[8] Based on Fields' appearance and his performance in roadside sobriety tests, he was arrested and taken to the county jail, where a breathalyzer test was administered. The test showed an alcohol concentration of 0.14,[9] which significantly exceeded the DWI statutory threshold of 0.10.[10]

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1. *See, e.g.*, Watts, *The Drinking-Driving Problem: Assessing Some Proposed Solutions*, 48 POPULAR GOV'T 20 (Winter 1983).

2. 77 N.C. App. 404, 335 S.E.2d 69 (1985). Defendant has decided not to appeal the decision. Telephone interview with the Office of Appellate Defender, Adam Stein, defendant's lawyer (Feb. 1986).

3. *Fields*, 77 N.C. App. at 406, 335 S.E.2d at 70. The provision at issue is N.C. GEN. STAT. § 20-138.1 (1983). Although § 20-138.1 is entitled "Impaired driving," the statutory offense is commonly referred to as DWI.

4. State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984) (general assembly intended no distinction between "driver" and "operator").

5. During its 1985 session, the general assembly amended N.C. GEN. STAT. § 20-4.01 to provide that "[t]he terms 'driver' and 'operator' and their cognates are synonymous." Act of July 1, 1985 ch. 509 § 6(2), 1985 N.C. Sess. Laws 579, 580 (codified as amended at N.C. GEN. STAT. § 20-4.01(7) (Supp. 1985)).

6. Safe Roads Act, ch. 435, 1983 N.C. Sess. Laws 332 (codified at N.C. GEN. STAT. § 20 (1983)). For a discussion of the policy considerations underlying the act, see *infra* notes 24-27 and accompanying text.

7. *Fields*, 77 N.C. App. at 404-05, 335 S.E.2d at 69.

8. *Id.* at 405, 335 S.E.2d at 69.

9. *Id.* The test was administered at 3:05 that morning.

10. N.C. GEN. STAT. § 20-138.1(a)(2) (1983). This subsection makes driving with an alcohol level of .10 percent or more a per se criminal violation. The requisite showing of alcohol concentration can be expressed either in terms of grams of alcohol per 100 millileters of blood or per 210 liters

Without contesting the State's evidence at trial, Fields and his companion testified that only the companion drove that night.[11] They had stopped the car so that they could "use the bathroom," and defendant had returned first and started the engine solely to turn on the heater.[12] Fields testified that he only intended to warm up the car; he did not intend to drive, he never put the car in gear, and the car never moved while he sat behind the wheel.[13] Nonetheless, the trial court found Fields guilty of driving while intoxicated.[14]

The question presented on appeal was whether the State could prosecute and convict a defendant for DWI without evidence that, while defendant exercised actual physical control of the car, the car had been in motion or that defendant had started the motor to drive the car.[15] Fields argued that the DWI charge should have been dismissed because he never "drove" the car within the meaning of North Carolina's DWI statute.[16] The statute provides in pertinent part:

> (a) Offense.—A person commits the offense of impaired driving if he *drives* any vehicle upon any highway, any street, or any public vehicular area within this State:
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> (1) While under the influence of an impairing substance; or
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> (2) After having consumed sufficient alcohol that he has, at any relevant time after the *driving*, an alcohol concentration of 0.10 or more.[17]

The court held that "one 'drives' within the meaning of G.S. 20-138.1 if he is in actual physical control of a vehicle which is in motion or has the engine running," and that defendant's purpose in starting the engine was irrelevant.[18]

In reaching this decision, the court of appeals relied on *State v. Coker*,[19] a 1984 decision in which the North Carolina Supreme Court held that in enacting the Safe Roads Act, the legislature had intended to make the terms "driver" and "operator" synonymous.[20] The court also took judicial notice of the fact the general assembly had specifically amended the Act during its 1985 session to

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of breath. Drennan, *Impaired Driving: The Safe Roads Act*, in NORTH CAROLINA LEGISLATION 1983 114 (U.N.C. Inst. of Gov't, A. Sawyer ed. 1983).

11. *Fields*, 77 N.C. App. at 405, 335 S.E.2d at 70.

12. *Id.*

13. *Id.*

14. *Id.* at 404, 335 S.E.2d at 69.

15. *Id.*

16. *Id.* at 405, 335 S.E.2d at 70.

17. N.C. GEN. STAT. § 20-138.1(a) (1983) (emphasis added).

18. *Fields*, 77 N.C. App. at 406, 335 S.E.2d at 70.

19. 312 N.C. 432, 323 S.E.2d 343 (1984), *cited in Fields*, 77 N.C. App. at 406, 335 S.E.2d at 70. The defendant in *Coker* argued that a citation which charged him with operating rather than driving a vehicle while impaired should be quashed. *See infra* text accompanying notes 36-37.

20. *Coker*, 312 N.C. at 436, 323 S.E.2d at 347. This holding also was relied on by the court of appeals in a case decided shortly before *Fields*. State v. Dellinger, 73 N.C. App. 685, 687, 327 S.E.2d 609, 611 (1985). In *Dellinger*, however, the primary issue was whether a horse qualified as a "vehicle" for purposes of DWI. *Id.* at 687, 327 S.E.2d at 610. The court concluded that it did and upheld defendant's conviction. *Id.* The defendant apparently made himself rather conspicuous by repeatedly spinning and rearing his mount during the Lincolnton Christmas parade. *Id.* at 686, 327 S.E.2d at 610.

provide that the terms were, indeed, synonymous.[21] Because the statutory definition of an "operator" is "a person in actual physical control of a vehicle which is in motion or which has the motor running,"[22] the court reasoned that evidence of Field's presence behind the wheel of a car while the motor ran was sufficient to show that he "drove" the car for purposes of section 20-138.1(a).[23]

To analyze the court of appeals' opinion in *Fields*, it is necessary to review briefly the recent history of DWI law in North Carolina. Enacted against a background of widespread public indignation directed against drunken drivers,[24] the Safe Roads Act of 1983[25] was a comprehensive revision of state law regulating drinking and driving.[26] The Act provided substantially increased penalties for the newly defined crime of impaired driving.[27] When a trial court held unconstitutional subsection 20-138.1(a)(2) of the Act, which makes driving with an alcohol concentration of .10 percent or above a per se criminal violation,[28] the supreme court, sua sponte, reviewed the decision immediately.[29] In *State v. Rose*[30] the supreme court addressed whether subsection 20-138.1(a)(2) contravened due process because of vagueness and lack of a reasonable relation

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21. *Fields*, 77 N.C. App. at 407, 335 S.E.2d at 70-71. The relevant terms are defined in N.C. GEN. STAT. § 20-4.01 (Supp. 1983) as follows:

> (7) Driver.—The operator of a vehicle, as defined in subsection (25). The terms "driver" and "operator" and their cognates are synonymous.
>
> . . . .
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> (25) Operator.—A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

22. N.C. GEN. STAT. § 20-4.01(25) (1983).

23. *Fields*, 77 N.C. App. at 407, 335 S.E.2d at 70.

24. *See* Watts, *supra* note 1, at 20; *see also* DRIVING WHILE IMPAIRED, RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRUNKEN DRIVERS, EXECUTIVE SUMMARY REPORT 1 (1983) [hereinafter cited as REPORT] (public hearings revealed a sense of "outrage at the manner in which our criminal justice system and our society deal with drunken drivers").

The Governor's Task Force on Drunken Drivers noted that 403 of 1,335 fatal accidents in North Carolina were alcohol related and resulted in 445 deaths. Nationwide, drunken drivers kill 25,000 persons and injure 750,000 more each year. REPORT, *supra*, at 3.

25. Safe Roads Act, ch. 435, 1983 N.C. Sess. Laws 332 (codified at N.C. GEN. STAT. § 20 (1983)).

26. Drennan, *supra* note 10, at 114. Although driving under the influence of alcohol and driving under the influence of other drugs previously constituted separate offenses, the Act replaced both with the single crime of impaired driving. *Id.* For the modern definition of DWI, see *supra* text accompanying note 17.

27. Consistent with the legislative policy of keeping drunk drivers off the road, current penalties provide forms of automatic license revocation rather than fines or imprisonment. For example, the 1983 Safe Roads Act provides a mandatory license revocation for certain drivers convicted of DWI, N.C. GEN. STAT. § 20-17(2) (1983), when formerly the trial judge had broad discretion to permit limited driving privileges, N.C. GEN. STAT. § 20-179(b)(1) (1975). A second DWI conviction within three years of a previous conviction results in a mandatory four-year license revocation. N.C. GEN. STAT. § 20-19(d) (1983). Further, a third offense generally means permanent revocation. N.C. GEN. STAT. § 20-19(i) (1983). Not all commentators agree that increasing the severity of punishment will reduce the number of accidents involving drunken drivers. *See generally* H. ROSS, DETERRING THE DRINKING DRIVER (1982) (an analysis of data from other contries which argues that increasing the severity of punishment is ineffective and may be counterproductive).

28. N.C. GEN. STAT. § 20-138.1(a)(2) (1983).

29. State v. Rose, 312 N.C. 441, 442-43, 323 S.E.2d 339, 340 (1984).

30. 312 N.C. 441, 323 S.E.2d 339 (1984).

to any legitimate state purpose.[31] The *Rose* court upheld the per se provision and ruled that it violated neither the fourteenth amendment of the United States Constitution nor the parallel due process provision in article I, section 19 of the North Carolina Constitution.[32]

Coker,[33] on which the *Fields* court explicitly relied,[34] was a companion case to *Rose*. In *Coker* the defendant had been arrested and charged in a uniform citation which alleged "that he did unlawfully and wilfully *operate* a motor vehicle while subject to an impairing substance. G.S. 20-138.1."[35] The citation was held to meet the statutory and constitutional requirements of subsection 20-138.1(c).[36] In reaching its decision, the supreme court acknowledged that prior statutes and caselaw have distinguished between "driving" and "operating."[37] In a 1972 case, *State v. Carter*,[38] the term "driving" under a former statute had been interpreted to require motion, even though the statute defined an "operator" as someone "in the driver's seat while the engine is running."[39] The *Coker* court, however, reasoned that because the new Safe Roads Act defines "driver" in terms of "operator," such a distinction no longer applied.[40] Rather, the legislature must have intended that the terms be synonymous.[41] Shortly after the *Coker* decision, the General Assembly affirmed the court's reasoning by amending the Act to provide that "[t]he terms 'driver' and 'operator' and their cognates are synonymous."[42]

Thus, at the time *Fields* was decided, the supreme court and the general assembly had made clear that the term "driver" would include any person in "actual physical control of a vehicle . . . which has the engine running."[43] Coupled with the premise that "driving" is a cognate of "drive,"[44] this authority mandated the court of appeals' conclusion in *Fields* that proof of someone sitting behind the wheel of a car while the engine is running satisfies the element of

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31. For the statutory language, see *supra* text accompanying note 17.

32. *Rose*, 312 N.C. at 443, 323 S.E.2d at 340-41.

33. 312 N.C. 432, 323 S.E.2d 343 (1984).

34. *Fields*, 77 N.C. App. at 406, 335 S.E.2d at 70.

35. *Coker*, 312 N.C. at 433, 323 S.E.2d at 345 (emphasis added).

36. *Id.* at 434, 323 S.E.2d at 346. N.C. GEN. STAT. § 20-138.1(c) (1983) provides: "(c) Pleading.—In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance."

37. *Coker*, 312 N.C. at 436, 323 S.E.2d at 347.

38. 15 N.C. App. 391, 190 S.E.2d 241 (1972), *cited in Coker*, 312 N.C. at 436, 232 S.E.2d at 347. In *Carter* the court upheld the defendant's conviction for driving while intoxicated. Defendant had been found asleep at the wheel of a car whose engine was running, with an open container of beer next to him. The car was stopped in front of a stop sign. The court reasoned that enough circumstantial evidence existed to infer that defendant had been driving, even though the policeman never actually saw the car in motion. *Carter*, 15 N.C. App. at 392-94, 190 S.E.2d at 242-43.

39. Act of March 5, 1935, ch. 52, § 1, 1935 N.C. Sess. Laws 34, 34, *repealed by* Act of April 12, 1974, ch. 1330, § 39, 1973 N.C. Sess. Laws 675, 691.

40. *Coker*, 312 N.C. at 436, 323 S.E.2d at 347.

41. *Id.*

42. *See supra* note 5.

43. *Fields*, 77 N.C. App. at 406, 335 S.E.2d at 70.

44. "Cognate" is defined as "descended or borrowed from the same earlier form." RANDOM HOUSE DICTIONARY 287 (unabridged ed. 1973).

"driving" contained in the DWI statute.[45]

The *Fields* holding may appear anomalous to North Carolina drivers because the ordinary connotation of the word "driving" includes the concept of motion. The defendant in *Fields* neither put the car in motion nor apparently had any intention of doing so.[46] Yet, as the supreme court explained in *Coker*, "[w]ords having technical meanings must be construed according to such meanings."[47] And the legislature had given the term "driving" at issue in *Fields* the sort of technical meaning that properly overrides any ordinary language connotation.[48]

One question raised by the *Fields* decision is whether the court correctly held that defendant's motive in sitting behind the wheel was "irrelevant."[49] A conviction for DWI results in substantial criminal penalties.[50] Traditionally, according to the common law, the State must prove a subjective intent and an overt act to obtain a criminal conviction.[51] Thus some requirement of intent arguably should be taken as implicit in the DWI statute.[52]

Generally, however, motor vehicle violations are regarded as public welfare offenses that warrant absolute liability.[53] Intent is irrelevant because the proscribed behavior poses a risk to highway safety regardless of defendant's mental state.[54] Significantly, the North Carolina DWI statute precludes any defense that the person charged was legally entitled to use the impairing substance.[55] A similar provision in the Illinois DWI statute has been interpreted as implying a legislative purpose to impose absolute liability for the offense.[56] Most importantly, the defendant in *Fields* was charged under the alcohol concentration prong of the DWI statute.[57] In upholding section 20-138.1(b)'s per se definition of the offense, the supreme court in *Rose* stated that "[a]ll persons are presumed to know the law and a defendant who drinks and then drives *takes the risk* that

45. *Fields*, 77 N.C. App. at 406, 335 S.E.2d at 70.

46. *See supra* text accompanying notes 12 and 13. Significantly, although "[d]rive" is primarily defined as "[t]o force (living beings) to move on or away," the secondary signification, "[t]o carry or convey in a vehicle," is expressed in terms of "control." 3 OXFORD ENGLISH DICTIONARY 671 (1961).

47. *Coker*, 312 N.C. at 435, 323 S.E.2d at 346. *Cf.* L. WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS *passim* (13th ed. 1973) (Wittgenstein defined meaning primarily in terms of ordinary usage, but he recognized "language games" in which a conventional usage of a word develops within a particular sphere of activity, for example, the law.).

48. For the current technical meaning of "driving," see *supra* note 21.

49. *Fields*, 77 N.C. App. at 407, 335 S.E.2d at 70.

50. *See* N.C. GEN. STAT. §§ 20-16 to -37 (1983). For example, § 20-16.5(e) provides an automatic ten-day license revocation upon even the first conviction.

51. *See* O'Sullivan, *Constitutional Challenges to Montana's Drunk Driving Laws*, 46 MONT. L. REV. 329, 331 (1985) (citing 4 W. BLACKSTONE, COMMENTARIES *21).

52. *See, e.g.*, Morisette v. United States, 342 U.S. 246, 252 (1952) (intent so inherent in concept of crime that no statutory affirmation is necessary).

53. *See* O'Sullivan, *supra* note 51, at 331.

54. O'Sullivan, *supra* note 51, at 335.

55. N.C. GEN. STAT. § 20-138.1(b) (1983). For example, the fact a person was entitled to use a prescribed drug would not constitute a defense.

56. People v. Teschner, 76 Ill. App. 3d 124, 127, 394 N.E.2d 893, 895 (1979).

57. N.C. GEN. STAT. § 20-138.1(a)(2) (1983). For the statutory language, see *supra* text accompanying note 17.

his blood-alcohol content will exceed the legal maximum."[58] This statement implies that intent is irrelevant to a DWI conviction.

However, the question still remains whether, assuming the veracity of his story, it was fair to convict Fields of a crime that entails serious criminal sanctions.[59] The majority and dissenting opinions of the Utah Supreme Court in *State v. Bugger*[60] suggest an alternative approach to this question. The defendant in *Bugger* was charged with driving under the influence of alcohol after a policeman found him asleep behind the wheel of a car; the motor was not running at the time. The majority found the defendant not guilty of DWI because he had not been in "actual physical control" of the vehicle,[61] but noted that an "entirely different" fact situation would have been presented had the motor been running.[62] Apparently, in such a case sufficient dominion or control over the automobile would have existed to bring the defendant's conduct within the wording of the statute.[63] The dissent stressed that the relevant state statute, which originally made it unlawful to "drive" under the influence of alcohol, had been amended to make it unlawful as well to be in "actual physical control of a vehicle."[64] The motivation for the amendment was a policy of deterrence: "It is better to prevent an intoxicated person in charge of an automobile from getting on the highway than it is to punish him after he gets on it."[65]

A policy of deterrence similarly motivated the North Carolina legislature when it enacted the new DWI law.[66] Authorizing police officers to "arrest a drunk person [before the car is in motion] . . . and thus prevent him from wreaking havoc a minute later"[67] serves this deterrence policy. Furthermore, the state's legitimate interest in protecting the lives of its citizenry[68] should outweigh the individual's interest in driving[69] when defendant's blood alcohol level is above the statutory limit.[70]

Yet, to avoid the potential for unfairness and suprise, the legislature should give notice to the public that an intoxicated person may face a DWI conviction when he or she sits in the driver's seat of a car whose motor is running. As the supreme court noted in *Rose*, statutory language should convey "sufficient defi-

58. *Rose*, 312 N.C. at 446, 323 S.E.2d at 342 (emphasis added). The court noted that this rationale had been accepted in other jurisdictions facing challenges to similar provisions. *Id.*

59. *See supra* text accompanying notes 11-13.

60. 25 Utah 2d 404, 483 P.2d 442 (1972).

61. *Id.* at 405-06, 483 P.2d at 443.

62. *Id.* at 406, 483 P.2d at 443.

63. *See id.*

64. *Id.* (Ellet, J., dissenting).

65. *Id.*

66. *See* Watts, *supra* note 1, at 32.

67. *Bugger*, 25 Utah 2d at 406, 483 P.2d at 443 (Ellett, J., dissenting).

68. *See* REPORT, *supra* note 24, at 3 (50% of drivers killed in traffic accidents were under the influence of alcohol).

69. *See* Mackey v. Montrym, 443 U.S. 1 (1979). In *Mackey* the Court recognized that the individual has a substantial interest in a driver's license. Nevertheless, the Court balanced that interest against the government's interest in the safety of its citizens, and upheld the 90-day mandatory suspension provision of Massachusetts' DWI law. *Id.* at 10-19.

70. *See supra* note 10 and accompanying text.

nite warning as to the proscribed conduct when measured by common understanding and practices."[71] Terms must be understandable by "an average person exercising ordinary common sense."[72] By amending the statutory definition to provide that "driver" and "operator" are synonymous,[73] the general assembly has partially fulfilled this basic fairness requirement. However, the public would receive better notice if the DWI provision itself were amended. By following the example of Utah's impaired driving statute[74] and amending section 20-138.1(a) to read "drives *or is in actual physical control* of any vehicle,"[75] the North Carolina legislature would overcome any possible objection based on fairness or lack of notice.[76]

The court of appeals' decision in *Fields* was mandated by the supreme court's holding in *Coker* and the general assembly's endorsement of that holding. Nevertheless, it seems unfair to convict someone for impaired driving when the person was not "driving" in any ordinary sense of the term. The general assembly could rectify this apparent unfairness by amending the DWI statute to include not only "driving" but also being "in actual physical control" of the vehicle within the statement of the offense. Such an amendment would further the legislative policy of deterring drunken driving.

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71. *Rose*, 312 N.C. at 444, 323 S.E.2d at 341 (citing Miller v. California, 413 U.S. 15 (1973); United States v. Petrillo, 332 U.S. 1 (1946); *In re* Burrus, 275 N.C. 517, 169 S.E.2d 879 (1969)).

72. *Id.*

73. *See supra* note 5.

74. *Bugger*, 25 Utah 2d at 406, 483 P.2d at 443 (Ellett, J., dissenting) ("amendment added a provision making it unlawful to be in actual physical control . . . and did away with the necessity of driving").

75. For the current statutory language, see *supra* text accompanying note 17.

76. The Uniform Vehicle Code includes "actual physical control" in its DWI provision, UVC § 11-902, and the DWI laws of at least 20 states contain similar or identical language. TRAFFIC LAWS ANNOTATED § 11-902, at 257 (1979). Whether or not the North Carolina DWI law is amended, it seems clear that an individual's presence behind the wheel of a car whose engine is *not* running would be insufficient for a conviction. The definition of operator in N.C. GEN. STAT. § 20-4.01(25) (1985) specifies that defendant's vehicle must be "in motion or . . . [have] the engine running."

State v. Parker: North Carolina Adopts the Trustworthiness Doctrine

Criminal suspects rely on a system of constitutional and non-constitutional doctrines to safeguard their rights as defendants. The United States Constitution assures criminal defendants the right to due process of law,[1] assistance of counsel,[2] and the privilege against self-incrimination.[3] Criminal defendants in North Carolina traditionally have relied on several common-law doctrines—including the "voluntariness" doctrine[4] and the *corpus delicti* doctrine[5]—to provide additional safeguards. Recently, however, the North Carolina Supreme Court has created substantial ambiguity in the realm of confession law doctrine.[6] By abandoning the *corpus delicti* doctrine in *State v. Parker*,[7] the court may have opened a Pandora's Box that will force defense attorneys and trial courts to rethink the way they deal with defendants' confessions and admissions.

The issue in *Parker* was whether a criminal defendant's extrajudicial confession that he robbed his murder victim had to be corroborated[8] by independent evidence of the essential elements of that crime. The North Carolina Supreme Court held the defendant's confession "trustworthy" and thus sus-

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1. U.S. CONST. amend. XIV, § 1.

2. U.S. CONST. amend. VI.

3. U.S. CONST. amend. V.

4. The voluntariness doctrine renders confessions inadmissible if they result from an overt threat of harm or promise of benefit. Although the doctrine arose from case law, its foundation rests on constititutional due process concerns. *See generally* Note, State v. Thomas: *When is a Confession Coerced and When is it Voluntary?*, 63 N.C.L. REV. 1214 (1985) (discussing the origins of the voluntariness doctrine as quasi-constitutional).

5. The traditional *corpus delicti* doctrine, which derives from common law, operates to exonerate a criminal suspect if the state fails to introduce any evidence apart from the suspect's confession that he or she actually committed the offense charged. For further discussion of the doctrine and its origins, see *infra* notes 43-71 and accompanying text.

6. In State v. Thomas, 310 N.C. 369, 312 S.E.2d 458 (1984), the North Carolina Supreme Court upheld the conviction of a criminal defendant based in part on his confession. Because the arresting officer had suggested that defendant confess to "help himself," defendant claimed that his confession was involuntary and thus inadmissable in court. *Id.* at 378, 312 S.E.2d at 463. A divided supreme court rejected his contention. *Id.* at 379, 312 S.E.2d at 464. According to one student commentator, "although the *Thomas* decision is not a pronounced deviation from existing case law . . . , there are problems with the court's straightforward approach, including the possibility that use of coercive confessions will be less restricted in the future." Note, *supra* note 4, at 1215; *see infra* notes 104, 120.

7. 315 N.C. 222, 337 S.E.2d 487 (1985). In State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986), the North Carolina Supreme Court attempted to clarify the *Parker* decision by stating that "the pre-*Parker* rule has *not* been abandoned but that *Parker* expanded the type of corroboration which may be sufficient to establish the trustworthiness of the confession." *Id.* at 532, 342 S.E.2d at 880 (emphasis added). This Note reasons that, despite this dicta, *Parker* effectively abandoned the *corpus delicti* doctrine traditionally recognized in North Carolina. *See infra* note 36.

8. "Corroborate" means "[t]o strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence." BLACK'S LAW DICTIONARY 311 (5th ed. 1979). One commentator has suggested that the term "corroborate" technically does not apply to the *corpus delicti* doctrine because the doctrine requires that evidence independent of the confession establish the crime itself. Thus, such evidence would be existential rather than supplementary. *See* Note, *Confession Corroboration in New York: A Replacement for the Corpus Delicti Rule*, 46 FORDHAM L. REV. 1205, 1211 n.35 (1978). This Note uses the term "corroborate" to encompass existential as well as supplementary evidence.

tained his conviction for robbery even though the State presented no independent evidence to support the robbery charge.[9] The significance of *Parker* is threefold: First, the decision directly overrules a long line of cases recently reaffirmed by the supreme court[10] as well as the North Carolina Court of Appeals;[11] second, the decision marks a departure from the majority approach to confession corroboration;[12] and last, the decision introduces a new rule of law that most federal courts and several state courts have adopted—the "trustworthiness" doctrine.[13] This Note analyzes *Parker* in light of the history of the *corpus delicti* doctrine, discusses the viability of that doctrine today, and critiques some of the *Parker* decision's oversights. It argues that the *Parker* court failed to address adequately how the lower courts should ascertain "trustworthiness," but concludes that North Carolina's new doctrine, if properly understood and consistently applied, may enhance the protections afforded criminal defendants.

In February 1983 sheriff's deputies recovered the bodies of Leslie Levon Thorbs and Ray Anthony Herring from the Tar River near a bridge in Pitt County, North Carolina.[14] Herring's wife had last seen Herring alive when he left his home to visit Thorbs at approximately 10:45 p.m. on February 18, 1983. Thorbs was last seen alive at about 10:00 p.m. that same night.[15] When Thorbs' foster child returned home at 12:30 a.m., he noticed Herring's car parked across the street and the absence of Thorbs' Cadillac. Thorbs' wallet was discovered at

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9. *Parker*, 315 N.C. at 238-39, 337 S.E. 2d at 495-96.

10. *See* State v. Brown, 308 N.C. 181, 301 S.E.2d 89 (1983), *overruled by Parker*, 315 N.C. 222, 337 S.E.2d 487 (1985). The *Brown* court vacated an arson conviction because "[e]ven though the defendant's confession identifies him as the person who committed the burning, the State must first establish the *corpus delicti*, that a crime was in fact committed." *Id.* at 183, 301 S.E.2d at 90. For further discussion of *Brown* in its historical context, see *infra* note 98.

11. State v. Trexler, 77 N.C. App. 11, 334 S.E.2d 414 (1985), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986). The North Carolina Court of Appeals in *Trexler* reversed a conviction for driving while impaired because "[t]here was not sufficient evidence to convict the defendant." *Id* at 12, 334 S.E.2d at 415. For a discussion of the court of appeals' decision in *Trexler*, see *infra* notes 93-102 and accompanying text. Since the *Parker* decision, the North Carolina Supreme Court has reversed the court of appeals' decision. State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986).

12. The vast majority of jurisdictions continue to adhere to the *corpus delicti* version of confession corroboration. *See* C. MCCORMICK, MCCORMICK ON EVIDENCE § 145, at 366 (3d ed. 1984) [hereinafter cited as MCCORMICK].

13. *See* 7 WIGMORE ON EVIDENCE § 2071, at 511 n.3 (Chadbourn rev. 1978 & Supp. 1985) [hereinafter cited as WIGMORE]; *see also infra* notes 107-16 and accompanying text (discussing the trustworthiness doctrine).

14. *Parker*, 315 N.C. at 224, 337 S.E.2d at 488. Both men died as the result of gunshot wounds to the head fired from close range. Herring also had been stabbed. *Id.* Apparently, the girlfriend of defendant Dwight Parker, Sr., notified the police of the location of the victims' bodies. *See* Defendant-Appellant's Brief at 5 n.6, *Parker*. She had helped to dispose of the bodies, although she had not participated in the commission of the crimes. *See id.* at 5 n.6; *id.* at 8 app. (showing trial court transcript of defendant's extrajudicial confession read into evidence).

15. *Parker*, 315 N.C. at 224, 337 S.E.2d at 488. According to Defendant-Appellant's Brief at 3 n.1, *Parker*, "[a]lthough Mrs. Herring did not know Thorbs, it appears from the record that Mr. Herring and Thorbs were friends . . . . [I]t was not unusual for Thorbs and Herring to go off together at night." Defendant Dwight Parker, Sr., did know Thorbs. *Id.* at 5 n.4. Parker confessed that he planned the murder and robbery of Thorbs, but that he had not anticipated the arrival of Thorbs' friend Herring; when Herring showed up unexpectedly, Parker decided to kill him also. *Parker*, 315 N.C. at 225, 337 S.E.2d at 488-89; *see also* Defendant-Appellant's Brief at 10-11, *Parker* (showing trial court transcript of defendant's extrajudicial confession read into evidence).

about noon on February 19, 1983.[16]

The Pitt County sheriff's department issued a warrant for the arrest of Dwight Parker, Sr., and on February 26, 1983, investigators apprehended him in Newark, New Jersey.[17] After one of the investigators interrogated Parker for approximately one hour,[18] Parker gave a short written statement admitting that he had murdered Thorbs and Herring. Eight hours of additional interrogation produced a second written statement, eight pages in length.[19] This disjointed account[20] of the double murder-robbery of Thorbs and Herring yielded a statement that Parker "got about $25.00 from [Thorbs] and $10.00 from the other guy."[21]

Although the evidence established that Parker had murdered both victims and robbed Thorbs,[22] no evidence directly or indirectly proved that Parker had robbed Herring of any money.[23] The state offered no evidence that any property of Herring was missing or taken,[24] and Parker never made any statements to anyone else regarding the theft.[25] A Pitt County jury, however, convicted Parker on two counts of first degree murder and two counts of armed robbery.[26]

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16. *See Parker*, 315 N.C. at 227, 337 S.E.2d at 496. The wallet contained several checks and credit cards, but no currency. Defendant-Appellant's Brief at 5, *Parker*.

17. A neighbor of Parker's girlfriend discovered Thorbs' wallet beneath a window air conditioning unit. *Parker*, 315 N.C. at 237, 337 S.E. 2d at 496. Parker's girlfriend apparently led investigators to the location of the victims' bodies. Defendant-Appellant's Brief at 5 n.6, *Parker*. Furthermore, on the afternoon of February 22, 1983, investigators discovered the remains of partially burned cloth with blood stains in a trash can behind the residence of Parker's girlfriend. *Id.* at 6. The *Parker* court emphasized that the details of Parker's confession substantially matched this evidence of the dual slayings and the robbery of Thorbs. *Parker*, 315 N.C. at 238-39, 337 S.E.2d at 496.

18. Parker fled the state soon after the murders, ostensibly to attend an aunt's funeral in New Jersey. Defendant-Appellant's Brief at 6 n.9, *Parker*. A team of Pitt County sheriff's investigators pursued Parker to New Jersey and apprehended him with the assistance of New Jersey police officers. They interrogated him in the Newark, New Jersey, Courts Building. *See id.* at 7-8.

19. *Id.* at 8.

20. Parker's confession, which a State witness read into evidence, contains some detail but the wording is rather incoherent. "Disjointed" was the term used by Parker's counsel on appeal. *Id.* at 8 n.16.

21. *Id.* at 9 app. (showing trial court transcript of defendant's extrajudicial confession read into evidence). Parker did not elaborate on this reference to the robbery of Herring. He did confess that he stole "$35.00 and the preacher's ring" and then "split the money" with his girlfriend. *Id.* at 12 app. No other evidence or testimony demonstrated that Parker actually took $10.00 from Herring. *Parker*, 315 N.C. at 237, 337 S.E.2d at 496.

22. *Parker*, 315 N.C. at 236-38, 337 S.E.2d at 495-96; *see also supra* notes 14-20 and accompanying text (discussing the facts and referring to pertinent portions in the trial transcript containing defendant's confession).

23. *Parker*, 315 N.C. at 238-39, 337 S.E.2d at 496.

24. When Ray Herring left his residence, he did not tell his wife where he was going, and no evidence indicated whether he took any money with him. Defendant-Appellant's Brief at 16, *Parker*.

25. *See supra* note 21. Counsel for defendant stressed that

> The state offered no evidence that Herring had any property that was missing after the crime. The State offered no evidence that the defendant made statements to anyone that he was planning to rob Herring. The State offered no evidence that the defendant told anyone other than the arresting officers that he took any property from Herring.

Defendant-Appellant's Brief at 17, *Parker*.

26. The trial court sentenced Parker to two life terms for each murder conviction and to 14 years for each armed robbery conviction, ruling that he serve all sentences consecutively. *Parker*, 315 N.C. at 224, 337 S.E.2d at 488. Under N.C. GEN. STAT. § 14-17 (1981), the State may charge a criminal defendant with a "willful, deliberate, and premeditated killing," or with a "murder . . .

Parker appealed his sentence, and the North Carolina Supreme Court granted his motion to bypass the court of appeals on the armed robbery conviction.[27] Parker contended that, absent a *corpus delicti aliunde*[28] his confession, he could not be convicted for the robbery of Herring.[29]

The North Carolina Supreme Court upheld Parker's conviction on all counts.[30] After dispensing summarily with Parker's fourth amendment argument,[31] the court addressed the merits of Parker's *corpus delicti* argument and held that "there was sufficient corroborative evidence to bolster the truthfulness of the defendant's confession and to sustain a conviction as to the Herring armed robbery even though there was no independent evidence tending to prove the *corpus delicti* of that crime."[32] The court expressly overruled language in *State v. Brown*,[33] *State v. Franklin*,[34] and other prior cases decided under the *corpus delicti* doctrine.[35] In place of that doctrine, the court adopted "a rule in non-capital cases that when the State relies upon the defendant's confession to obtain a conviction," a conviction will stand so long as "the accused's confession is supported by substantial independent evidence tending to establish its trustworthiness."[36]

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committed in the perpetration of any . . . robbery, . . . or other felony committed or attempted with a deadly weapon," and in either case a conviction would constitute first degree murder. In *Parker* the State successfully prosecuted Parker on two counts of first degree murder; it also obtained two separate convictions on charges of armed robbery, *Parker*, 315 N.C. at 224, 337 S.E.2d at 488, each of which carries a minimum sentence of 14 years. *See* N.C. GEN. STAT. § 14-87 (1981). For further discussion of the State's strategy in seeking these particular convictions rather than others, see *infra* notes 80-82 and accompanying text.

27. *Parker*, 315 N.C. at 224, 337 S.E.2d at 488.

28. "*Aliunde*" literally means "[f]rom another source; from elsewhere, from outside." BLACK'S LAW DICTIONARY 68 (5th ed. 1979). This Note uses the word to mean "independent of" or "apart from."

29. *Parker*, 315 N.C. at 225, 337 S.E.2d at 489.

30. *Id.* at 238, 337 S.E.2d at 496.

31. Parker contended that he was subjected to an unlawful search and seizure, but the court rejected this argument. *Id.* at 226, 337 S.E.2d at 489-90. In addition, Parker requested that the North Carolina Supreme Court reconsider its position on the issue of death-qualified juries, which the court refused to do. *Id.* at 239, 337 S.E.2d at 497.

32. *Id.* at 238-39, 337 S.E.2d at 496-97.

33. 308 N.C. 181, 301 S.E.2d 89 (1983).

34. 308 N.C. 682, 304 S.E.2d 579 (1983).

35. *Parker*, 315 N.C. at 239, 337 S.E.2d at 497. By implication, the *Parker* decision also overruled the North Carolina Court of Appeals' decision in State v. Trexler, 77 N.C. App. 11, 334 S.E.2d 414 (1985), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986).

36. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495. In State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986), the North Carolina Supreme Court attempted to clarify and qualify its *Parker* decision. Speaking for a unanimous court, Chief Justice Branch stated that

> the pre-*Parker* rule has not been abandoned but that *Parker* expanded the type of corroboration which may be sufficient to establish the trustworthiness of the confession. The pre-*Parker* rule is still fully applicable in cases in which there is some *evidence aliunde* the confession which, when considered with the confession, will tend to support a finding that the crime charged occurred. The rule does not require that the *evidence aliunde* the confession prove any element of the crime.

Id. at 532, 342 S.E.2d at 880. Rather than clarify the status of confession corroboration doctrine in North Carolina, the supreme court's *Trexler* decision further confuses the issues. The traditional *corpus delicti* doctrine requires that the state obtain a conviction using independent evidence of essential elements of the crime itself. *See infra* notes 43-47, 66-67 and accompanying text. In contrast, the trustworthiness doctrine requires that the state obtain a conviction using independent

The *Parker* court made several policy arguments in support of its ruling. It reasoned that the *corpus delicti* doctrine had created confusion and inconsistencies among the courts;[37] the doctrine had proved burdensome for the State;[38] and finally, modern constitutional decisions such as *Miranda v. Arizona*,[39] as well as the state's voluntariness doctrine,[40] adequately safeguard the rights of criminal defendants. Moreover, the *Parker* court stressed that the trustworthiness doctrine represents a better approach to confession corroboration concerns.[41] The court reasoned that Parker clearly had murdered both victims and robbed at least one of them, and details in his confession closely paralleled independent evidence of these crimes.[42] Absent any indication of unreliability, the court found no reason to disbelieve defendant's admission of guilt.

To analyze *Parker* thoroughly, it is first necessary to consider the development of the *corpus delicti* doctrine. *Corpus delicti* means "[t]he body of the crime . . . . In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed."[43] Traditionally, the *corpus delicti* of a crime consists of three components: First, proof of a specific injury, harm, or loss such as the dead body in a homicide case or the burned building in an arson case;[44] second, proof that someone's criminal conduct caused the injury, loss, or harm;[45] and last, proof of the accused's identity or agency as the criminal.[46] In North Carolina, prior to *Parker*, the State had to establish the first two components using evidence *aliunde* defendant's confession, although a confession sufficed to prove identity or criminal agency.[47]

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evidence that corroborates the defendant's confession. *See infra* text accompanying notes 107-08. Chief Justice Branch seemingly confused the two doctrines.

In *Parker* Justice Billings clearly rejected North Carolina's traditional *corpus delicti* doctrine. *See Parker*, 315 N.C. at 236, 337 S.E.2d at 495 ("[I]t is no longer necessary that there be independent proof tending to establish the *corpus delicti* of the crime charged . . . ."). Chief Justice Branch merely stated a truism when he noted that the state must introduce independent evidence of the *corpus delicti* when the evidence exists. *See Trexler*, 316 N.C. at 528, 342 S.E.2d at 878 (1986). *Trexler* essentially preserves the *Parker* ruling and all its ramifications. Thus, although the state may rely on the "rule enunciated in *Parker*" when "independent proof [of the *corpus delicti*] is lacking," *id.* at 532, 342 S.E.2d at 881, *Trexler* apparently still requires that the courts pay nominal homage to the old *corpus delicti* doctrine. The same concerns that Justice Billings expressed in *Parker*, *see infra* notes 86-92 and accompanying text, have returned to haunt North Carolina courts.

37. *See Parker*, 315 N.C. at 233, 337 S.E.2d at 493.

38. *See id.* at 234, 337 S.E.2d at 494.

39. 384 U.S. 436, 436 (1966) (establishing procedural safeguards for any individual who is "taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning").

40. In North Carolina a confession must be "voluntary" to be admissible as evidence of guilt. 2 H. BRANDIS, BRANDIS ON NORTH CAROLINA EVIDENCE § 183 (2d rev. ed. 1982). For further discussion of the voluntariness doctrine and its relation to the *corpus delicti* doctrine, see *infra* notes 104, 118-20 and accompanying text.

41. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495.

42. *Id.* at 236-37, 337 S.E.2d at 495-96; *see supra* notes 14-22 (discussing the facts and referring to pertinent portions of the trial transcript).

43. BLACK'S LAW DICTIONARY 310 (5th ed. 1979).

44. WIGMORE, *supra* note 13, § 2072, at 524-25. Wigmore remarks that "the term *corpus delicti* in its orthodox sense" would only apply to this first component. *Id.* at 524.

45. WIGMORE, *supra* note 13, § 2072, at 525-26.

46. WIGMORE, *supra* note 13, § 2072, at 526.

47. *Parker*, 315 N.C. at 231, 337 S.E.2d at 492-93; *see also* State v. Franklin, 308 N.C. 682, 690, 304 S.E.2d 579, 584-85 (1983) (citing WIGMORE, *supra* note 13, § 2072, at 524-25); State v. Green,

The *corpus delicti* doctrine originated in England to guard against wrongful convictions of innocent defendants.[48] In the United States all but a few jurisdictions[49] adopted the doctrine, requiring proof *aliunde* defendant's confession that a crime had occurred. Until the seminal case of *State v. Cope*,[50] North Carolina apparently did not recognize the need for *corpus delicti* proof when a defendant confessed to a crime.[51] Since *Cope*, however, North Carolina courts have recognized and applied the doctrine in numerous cases under varying circumstances.[52] Today, most jurisdictions still adhere to the *corpus delicti* doctrine,[53] while the federal courts[54] and several state courts[55] have adopted a new ap-

295 N.C. 244, 248, 244 S.E.2d 369, 371-72 (1978) (stating that independent evidence of injury and causation is required, but a confession may establish criminal identity). Most *corpus delicti* jurisdictions require that the State prove only these first two components. *See* MCCORMICK, *supra* note 12, at 366-67.

48. *See* WIGMORE, *supra* note 13, § 2070, at 508-10.

49. Wigmore refers to Massachusetts, North Carolina, and Wisconsin as three jurisdictions that initially refused to embrace the *corpus delicti* doctrine. *See* WIGMORE, *supra* note 13, § 2071, at 511 n.1. Only Massachusetts still clings to the rule that a criminal conviction may be based solely on a defendant's confession, without extrinsic corroboration. *See, e.g.*, Commonwealth v. Kimball, 321 Mass. 290, 73 N.E.2d 468 (1947) (upholding conviction for indecent assault based solely on confession).

50. 240 N.C. 244, 81 S.E.2d 773 (1954) (interpreting prior cases and readopting the *corpus delicti* doctrine).

51. In the early case of State v. Long, 2 N.C. (1 Hayw.) 455, 456 (1797), North Carolina seemed to adopt the general American rule requiring corroboration: "[A] naked confession, unattended with circumstances, is not sufficient." *Id.* at 246. However, in State v. Cowan, 29 N.C. (1 Ired.) 239 (1847), Chief Justice Ruffin stated that a "fully proved" and voluntary extrajudicial confession "which goes to the whole case is plenary evidence to the jury." *Id.* at 246. In *Cope* the North Carolina Supreme Court reaffirmed the earlier *Long* holding and again joined the majority of jurisdictions requiring corroboration. *Cope*, 240 N.C. 244, 81 S.E.2d 773 (1954). *See generally* Note, *Criminal Law—Confessions—Admissibility of Corroborative Evidence*, 42 N.C.L. REV. 219 (1963) (commenting on the development of the corroboration requirement).

52. *See, e.g.*, *Franklin*, 308 N.C. 682, 304 S.E.2d 579 (upholding first degree murder conviction of defendant charged with felony murder), *overruled by Parker*, 315 N.C. 222, 337 S.E.2d 487 (1985); *Brown*, 308 N.C. 181, 301 S.E.2d 89 (vacating an arson conviction based on defendant's uncorroborated confession), *overruled by Parker*, 315 N.C. 222, 337 S.E.2d 487 (1985); State v. Hageman, 307 N.C. 1, 296 S.E.2d 433 (1982) (upholding conviction for attempted receipt of stolen property); State v. Whittemore, 255 N.C. 583, 122 S.E.2d 396 (1961) (upholding conviction for crime against nature); State v. Foye, 254 N.C. 704, 120 S.E.2d 169 (1961) (upholding conviction for murder); State v. Bass, 253 N.C. 318, 116 S.E.2d 772 (1960) (reversing conviction for violating North Carolina's "Peeping Tom" statute); State v. Trexler, 77 N.C. App. 11, 334 S.E.2d 414 (1985) (reversing conviction for driving while intoxicated), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986).

53. *See* MCCORMICK, *supra* note 12, at 366. A few jurisdictions have codified the *corpus delicti* doctrine. *See id.* at 365 n.3.

54. In the seminal case of Opper v. United States, 348 U.S. 84 (1954), the United States Supreme Court resolved conclusively that "the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." *Id.* at 93. In a companion case, Smith v. United States, 348 U.S. 147 (1954), the Supreme Court ruled that all elements of a crime must be proved by the State, but "one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused." *Id.* at 156. Almost all lower federal courts now follow this version of the confession corroboration doctrine. *See, e.g.*, United States v. Waller, 326 F.2d 314 (4th Cir.), *cert. denied*, 377 U.S. 946 (1963); *see also* WIGMORE, *supra* note 13, § 2071, at 511 n.3 (listing federal decisions recognizing the trustworthiness doctrine). *See generally* MCCORMICK, *supra* note 12, at 368-70 (discussing the development of the "Trustworthiness of Confession" doctrine).

55. *See* WIGMORE, *supra* note 13, § 2071, at 511 n.3. With the North Carolina Supreme Court's decision in *Parker*, North Carolina became the latest addition to this growing minority of jurisdictions.

proach to confession corroboration—the "trustworthiness" doctrine, which focuses on the reliability of a defendant's confession rather than independent evidence of the *corpus delicti*.[56]

Over time the *corpus delicti* doctrine assumed various manifestations. Originally the doctrine evolved as a "first cousin"[57] of the common-law voluntariness doctrine,[58] which renders inadmissible confessions obtained by threat of harm or promise of benefit. Whereas the voluntariness doctrine has "constitutional underpinnings, the corroboration requirement has never attained that stature," nor has it been "implemented as an 'exclusionary rule.' "[59] Rather, the doctrine's significance in criminal cases[60] pertains to the sufficiency of corroborative evidence: has the State marshalled enough evidence *aliunde* defendant's confession to establish the body of the crime and hence sustain a conviction?[61] Prior to the *Parker* decision, the doctrine applied to all extrajudicial[62] confessions and apparently all admissions in North Carolina.[63] The courts, however, recognized special rules of application in felony murder cases[64] and homicide

56. The trustworthiness doctrine gained impetus from federal and state court decisions that abandoned the old *corpus delicti* doctrine. *See supra* notes 54-55. For further discussion of the trustworthiness doctrine, see *infra* text accompanying notes 107-12.

57. *See* Margolis, *Corpus Delicti: State of the Disunion*, 2 SUFFOLK U.L. REV. 44, 46 (1968).

58. *See generally* Note, *supra* note 4, at 1220-27 (discussing the development of the voluntariness doctrine as well as its current viability in North Carolina).

59. Note, *supra* note 8, at 1210.

60. As a general rule, the *corpus delicti* doctrine does not apply to admissions of a party in a civil case. WIGMORE, *supra* note 13, § 2075, at 534. In one unusual case, Bell v. Page, 271 N.C. 396, 156 S.E.2d 711 (1967), defendant invoked the *corpus delicti* doctrine to defeat plaintiff's claim of negligence per se. Plaintiff relied on defendant's extrajudicial admission to prove that defendant failed to comply with a municipal ordinance. *Id.* at 399, 156 S.E.2d at 712. Upholding a verdict against defendant, the North Carolina Supreme Court ruled that enough evidence supported the admission to satisfy the *corpus delicti* doctrine. *Id.*

61. *See* Note, *supra* note 8, at 1210-11 (remarking that the *corpus delicti* doctrine constitutes "an added requirement of evidentiary sufficiency needed to get to the jury").

62. The *corpus delicti* doctrine applies only to extrajudicial confessions. When the accused makes a confession in court or to a magistrate, the need for corroborative evidence subsides because the doctrine evolved to guard against wrongfully obtained or mistakenly uttered confessions. *See infra* notes 72-76 and accompanying text; *Developments in the Law—Confessions*, 79 HARV. L. REV. 935, 1079-80 (1966) (discussing infrajudicial and extrajudicial statements and the applicability of the doctrine) [hereinafter cited as *Developments*].

63. *See* 2 H. BRANDIS, *supra* note 40, § 182, at 62. A "confession" is defined as a "voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged." BLACK'S LAW DICTIONARY 269 (5th ed. 1979). In comparison, "admissions" should be regarded as "statements by a party . . . of the existence of a fact which is relevant to the cause of his adversary." *Id.* at 44. Admissions may result from either inculpatory statements or exculpatory statements. *See Developments*, *supra* note 62, at 1078. The potential for wrongly induced or falsely uttered admissions equals that of confessions, and so traditionally all statements by the defendant fell within the scope of the *corpus delicti* doctrine. *See* Opper v. United States, 348 U.S. 84, 92 (1954); *Developments*, *supra* note 62, at 1078-80. The North Carolina Supreme Court recently concluded that "the *corpus delicti* rule applies with equal force to confessions and admissions," and categorized confessions as "a type of . . . admission." State v. Trexler, 316 N.C. 528, 531, 342 S.E.2d 878, 879-80 (1986).

64. *See, e.g.*, *Franklin*, 308 N.C. 682, 304 S.E.2d 579, in which the North Carolina Supreme Court departed from the traditional *corpus delicti* doctrine and set a new precedent for felony murder cases. Defendant in *Franklin* confessed that he had forced a young girl to perform fellatio on him and then murdered her. Although the State introduced no evidence of the underlying first degree sex offense, the court upheld defendant's conviction for felony murder. *Id.* at 693-94, 304

cases generally.[65]

To establish the *corpus delicti* of a crime,[66] the State traditionally must prove all essential elements of the crime *aliunde* defendant's confession.[67] The *corpus delicti* doctrine, however, allows for some flexibility. As a general rule, the courts do not require independent evidence of every fact necessary to sustain a conviction,[68] especially if that fact relates to questions of degree or circumstance.[69] Moreover, either direct or circumstantial evidence may suffice to sustain a conviction, so long as the evidence tends to substantiate the *corpus delicti*.[70] The order of evidence presented at trial may vary without prejudicing the State's case.[71]

S.E.2d at 586; see *supra* note 26 for the relevant portions of North Carolina's murder statute. *Franklin* formulated a new twist to the old *corpus delicti* doctrine and set the stage for *Parker*:

> Where there is proof of facts and circumstances which add credibility to the confession and generate a belief in its *trustworthiness, and* where there is independent proof of death, injury, or damage, as the case may require, by criminal means, these concerns vanish and the rule has served its purpose. Elements of the offense may then be proved through the statements of the accused.

Franklin, 308 N.C. at 693, 304 S.E.2d at 586 (emphasis added). Thus, as recognized by the *Parker* court in 1985, "the *Franklin* opinion makes clear that the *corpus delicti* of felony murder 'is established by evidence of the death of a human being by criminal means.' " *Parker*, 315 N.C. at 228, 337 S.E.2d at 490 (quoting *Franklin*, 308 N.C. at 692, 304 S.E.2d at 585-86); *accord* People v. Daly, 47 N.Y.2d 916, 393 N.E.2d 479, 419 N.Y.S.2d 485 (1979) (allowing defendant's confession to prove the underlying felony in a felony murder case). *But cf.* People v. Allen, 390 Mich. 383, 212 N.W.2d 21 (1973) (ruling that corroborative evidence must tend to prove the felony).

65. *See, e.g.*, State v. Jensen, 28 N.C. App. 436, 221 S.E.2d 717 (1976) (ruling that the *corpus delicti* in criminal homicide involves the fact of death and existence of criminal agency). Professor McCormick cautions that "[t]he corroboration requirement must be distinguished from the common law rule that a murder conviction required direct proof of death of the victim or of the act of the defendant alleged to have caused the death of the victim." MCCORMICK, *supra* note 12, at 365-66 n.3. *See generally* Perkins, *The Corpus Delicti of Murder*, 48 VA. L. REV. 173 (1962) (discussing the elements that comprise the *corpus delicti* of murder).

66. For a discussion of the doctrine's definition and components, see *supra* text accompanying notes 43-47.

67. *See Developments*, *supra* note 62, at 1073 (noting that "any element essential to the criminality of the act alleged seems to be normally included in the *corpus delicti*"). The burden of proof traditionally rests on the state. To prove its case, the state traditionally must substantiate the *corpus delicti*. *See* State v. Trexler, 77 N.C. App. 11, 16-17, 334 S.E.2d 414, 417-18 (Becton, J., concurring) (arguing that the *corpus delicti* doctrine constitutes part of the state's burden of proof), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986).

68. *See Developments*, *supra* note 62, at 1074-75.

69. *See Developments*, *supra* note 62, at 1074-75.

70. Regarding the quantum and character of evidence required to establish the *corpus delicti*, McCormick has remarked that

> there is widespread but apparently not universal agreement that the corroborating evidence need not establish the *corpus delicti* beyond a reasonable doubt. Wide variation exists in the statement of the standard for determining the sufficiency of the evidence. If this is met, however, it is quite clear that this evidence and the defendant's confession can be considered together in determining whether the prosecution has proved those matters constituting the *corpus delicti* beyond a reasonable doubt. The corroborating evidence need not necessarily be direct evidence; circumstantial proof will do. On the other hand, another uncorroborated statement of the defendant cannot be used to meet the requirement; a conviction will not, in other words, be upheld upon proof of two or more otherwise uncorroborated confessions.

MCCORMICK, *supra* note 12, at 368. North Carolina courts apparently have recognized a low threshold for determining the sufficiency of corroborative evidence. *See Parker*, 315 N.C. at 236, 337 S.E.2d at 494-95 (describing North Carolina as being in accord with most other *corpus deliciti* jurisdictions, before ruling that the doctrine no longer applies in this jurisdiction).

71. Trial judges typically do not impose a strict requirement that independent evidence precede

At least three grounds traditionally have been used to justify the common-law doctrine of *corpus delicti*. First, an unreliable confession could result in the conviction of an innocent person.[72] Some courts have viewed confessions as inherently unreliable,[73] while other courts have stressed the potential for wrongly obtained and hence falsely uttered confessions.[74] In theory, independent evidence of the body of the crime eliminates this concern. Second, when the courts require corroborative evidence to substantiate a charge, they ensure that a crime in fact has occurred and they avoid ambiguities that otherwise might arise.[75] Third, the *corpus delicti* doctrine shifts the burden of producing evidence onto the State which generally bears the burden of proof in criminal cases.[76]

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the introduction of defendant's confession or admission. *See Developments, supra* note 62, at 1082 (noting that "no case seems to have held that an erroneous order of proof requires a new trial"). In addition, although the trial court monitors the introduction of evidence, some jurisdictions would allow the jury to determine the sufficency of *corpus delicti* proof. *See id.* at 1081-82.

72. *See generally Developments, supra* note 62, at 1082-83 (evaluating the rationale of the doctrine); Note, *supra* note 8, at 1207-09 (evaluating the rationale of the doctrine). This concern may justify recognition of the *corpus delicti* doctrine whether the defendant faces a possible conviction for a capital or noncapital offense, because the risk of a wrongful conviction in a noncapital case equals or exceeds the risk involved in a capital case. *See Developments, supra* note 62, at 1081.

73. In the first North Carolina case to invoke the *corpus delicti* doctrine, the court admonished that "[a] confession, from the very nature of the thing, is a very doubtful species of evidence, and to be received with great caution." State v. Long, 2 N.C. (1 Hayw.) 455, 456 (1797) (decision vacating defendant's conviction for horse stealing). In the recent case of State v. Trexler, 77 N.C. App. 11, 334 S.E.2d 414 (1985), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986), decided immediately prior to *Parker*, Judge Becton warned that in the absence of a confession corroboration requirement, "defendants would be pressured to take the stand in many instances to explain their insoluably ambiguous statements or testify that their allegedly criminal acts resulted from negligence or accident. This the law does not require." *Id.* at 17, 334 S.E.2d at 417 (Becton, J., concurring) (decision reversing defendant's conviction for driving while intoxicated). But compare *Long* and *Trexler* with the court's decision in State v. Cowan, 29 N.C. (1 Ired.) 239, 246 (1847), which declared that "a confession which goes to the whole case is plenary evidence to the jury." The precedent established in *Cowan* was later overruled. *See supra* notes 50-51.

74. *See Developments, supra* note 62, at 1082-83. One egregious case involving a wrongly induced confession arose in North Carolina. State v. Bass, 253 N.C. 318, 116 S.E.2d 772 (1960). Defendant in *Bass*, a black man, had "confessed" that he had peered into the window of a Mrs. Bessie Hardy without her consent, in violation of North Carolina's "Peeping Tom" statute. Defendant later contended that the sheriff's deputies had threatened and beaten him and that therefore his confession was involuntary. Rather than delve into the voluntariness of his confession, the *Bass* court reversed defendant's conviction because the State had failed to satisfy the *corpus delicti* doctrine. *See id.* at 332-24, 116 S.E.2d at 775-76. For other authority on North Carolina's voluntariness doctrine, see Note, *supra* note 4.

75. As one student commentator noted, the *corpus delicti* doctrine "seeks to prevent convictions based on a confession to a nonexistent crime." Note, *supra* note 8, at 1207. It shocked the public's conscience when "victims" sometimes returned alive after their supposed murderers had been convicted. *See id.* at 1205, 1207. To ensure that this phenomenon would not happen, and also to guard against convictions based on speculation or conjecture, the doctrine requires some corroborative evidence. *See* State v. Brown, 308 N.C. 181, 184, 301 S.E.2d 89, 90-91 (1983) (reversing arson conviction), *overruled by Parker*, 315 N.C. 222, 337 S.E.2d 487; *see also* State v. Bass, 253 N.C. 318, 323, 116 S.E.2d 772, 776 (1960) (reversing conviction because "[t]he evidence offered is circumstantial, conjectural, and speculative").

76. In Smith v. United States, 348 U.S. 147, 153 (1954), the United States Supreme Court recognized that a confession corroboration doctrine rests partly on "the realization that sound law enforcement requires police investigations which extend beyond the words of the accused." In a North Carolina Court of Appeals opinion decided prior to *Parker*, State v. Trexler, 77 N.C. App. 11, 334 S.E.2d 414 (1985), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986), Judge Becton eloquently defended the *corpus deliciti* doctrine on these grounds:

[I]mplicit in our criminal justice system is the social contract notion that in exchange for

In *State v Parker*[77] the North Carolina Supreme Court encountered a situation that traditionally would require independent evidence of the *corpus delicti*. There was sufficient evidence to establish that Parker had murdered both Herring and Thorbs and that Parker had robbed Thorbs.[78] However, only Parker's ambiguous statement that he "got . . . $10.00 from the other guy" indicated that he had robbed Herring.[79] Rather than accuse Parker of felony murder, which clearly would have resulted in a first degree murder conviction,[80] the State prosecuted Parker for armed robbery[81] in addition to the first degree murder of Herring.[82] The supreme court upheld Parker's separate armed robbery conviction[83] and abandoned the *corpus delicti* doctrine altogether.[84] In its place, the court adopted the "trustworthiness" doctrine.[85]

> our inability to discover the "absolute" truth, we assure criminal defendants that we will provide them as fair a trial as humanly possible. And so the balance won't be further skewed by whatever inherent advantage the State may have, we give criminal defendants certain procedural rights, we place the burden of proof on the State, and we give the defendant an absolute right not to testify or present a defense.

Id. at 16-17, 334 S.E.2d at 447 (Becton, J., concurring).

77. 315 N.C. 222, 337 S.E.2d 487 (1985).

78. *See id.* at 237, 337 S.E.2d at 495-96; *supra* notes 16-17 and accompanying text.

79. *See supra* notes 24-25 and accompanying text.

80. *See Franklin*, 308 N.C. 682, 304 S.E.2d 579. In *Franklin* the North Carolina Supreme Court carved out an "exception" to the *corpus delicti* doctrine: the *corpus delicti* of felony murder "is established by evidence of the death of a human being by criminal means independent of [a] confession," and a confession suffices to prove the underlying felony. *Id.* at 692, 304 S.E.2d at 585-86. The *Parker* court recognized correctly that the holding in *Franklin* did not abolish the *corpus delicti* doctrine. *See Parker*, 315 N.C. at 228, 337 S.E.2d at 490-91. Under N.C. GEN. STAT. § 14-87 (1981), the defendant may face charges of actual or attempted robbery. Armed robbery is defined as "the nonconsensual taking of the personal property of another in his presence or from his person by endangering or threatening his life with a firearm or other deadly weapon, with the taker knowing that he is not entitled to the property and intending to permanently deprive the owner thereof." State v. Bates, 309 N.C. 528, 534, 308 S.E.2d 258, 262 (1983). Whether an attempted robbery has occurred is a question of fact. The trial court must determine whether the acts of the defendant advanced beyond the stage of mere preparation and whether the defendant exhibited the requisite intent. *See* State v. Powell, 6 N.C. App. 8, 12, 169 S.E.2d 210, 213 (1969). In *Parker* the defendant concededly used a gun in the perpetration of the double murder-robbery, although the gun never was recovered. *See* Defendant-Appellant's Brief at 9 n.18, *Parker*. It is an open question whether the State may have prevailed on an attempt theory.

81. For a glimpse at relevant portions of North Carolina's murder statute, see *supra* note 26. For additional information on the *Franklin* case, see *supra* note 64.

82. *Parker*, 315 N.C. at 222, 337 S.E.2d at 488. It appears that the State made a conscious choice to prosecute Parker for armed robbery as a separate offense. In its brief, the State explained that

> Unlike *Franklin*, . . . the State here did not adopt a felony murder theory and the trial court charged the jury only on the theory of premeditation and deliberation. The evidence, however, plainly supports such a theory as to the murder of Ray Herring. However, a felony murder theory precludes the State from prosecuting a defendant on the separate armed robbery of Ray Herring.

Brief for the State at 7-8, *Parker*. Thus, Parker's separate conviction for armed robbery carried an additional 14-year sentence, to be served consecutively. *See Parker*, 315 N.C. at 222, 337 S.E.2d at 488.

83. *See Parker*, 315 N.C. at 238-39, 337 S.E.2d at 496-97.

84. *Id.* The court added that "[b]y this ruling, we expressly overrule language in State v. Franklin, 308 N.C. 682, 304 S.E.2d 579 (1983), State v. Brown, 308 N.C. 181, 301 S.E.2d 89 (1983) and other prior cases on the *corpus delicti* issue cited in these opinions which is inconsistent with our holding in the instant case." *Parker*, 315 N.C. at 239, 337 S.E.2d at 496-97.

85. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495; *see supra* notes 35-36 and accompanying text.

Writing for a unanimous court,[86] Justice Billings gave at least three reasons for abandoning the *corpus delicti* doctrine. First, the doctrine defies ready definition, and "[i]t is therefore axiomatic that the results obtained through application of a rule requiring independent proof of the *corpus delicti* will not be consistent or comparable."[87] Various factors add to the confusion: (1) many courts have failed to distinguish between the requirements of the doctrine[88] and the elements of a crime;[89] (2) it is "nearly impossible" to apply the doctrine to crimes that traditionally have no tangible *corpus*, such as conspiracy and the "attempt" crimes;[90] and (3) modern statutes often define crimes that have no obvious *corpus* per se.[91] For these reasons, Justice Billings argued that the *corpus delicti* doctrine places an unwarranted burden on the state.[92]

State v. Trexler,[93] a case that the North Carolina Court of Appeals decided immediately prior to *Parker*,[94] seemingly supports the view that the doctrine spawns inordinate controversy and confusion. In *Trexler* defendant was tried and convicted for driving while intoxicated: defendant's car had wrecked, and soon afterwards he was discovered nearby in an intoxicated state.[95] A divided North Carolina Court of Appeals overturned defendant's conviction because the State introduced no evidence, apart from defendant's extrajudicial admission,[96]

86. Justice Billings wrote the *Parker* opinion. Suprisingly, not a single justice dissented, even though the North Carolina Supreme Court had reaffirmed its commitment to the *corpus delicti* doctrine as recently as 1983. *See Brown*, 308 N.C. 181, 301 S.E.2d 89.

87. *Parker*, 315 N.C. at 232, 337 S.E.2d at 493; *see also* MCCORMICK, *supra* note 12, at 367 (noting that "the concept of *corpus delicti* is not entirely clear"); Note, *supra* note 8, at 1206 (concluding that the doctrine "is outmoded, vague, and unworkable").

88. *See Parker*, 315 N.C. at 232-33, 337 S.E.2d at 493. For a literal definition of "*corpus delicti*" and for a description of what the doctrine requires, see *supra* text accompanying notes 43-47.

89. Traditionally, the state must prove all essential elements of the crime *aliunde* defendant's confession. The courts, however, have allowed for some flexibility, depending on the circumstances. *See supra* notes 67-71 and accompanying text.

90. *Parker*, 315 N.C. at 232, 337 S.E.2d at 493.

91. *Id.*; *see* MCCORMICK, *supra* note 12, at 370-71.

92. *See Parker*, 315 N.C. at 234, 337 S.E.2d at 494 (quoting Comment, *California's Corpus Delicti Rule: The Case for Review and Clarification*, 20 UCLA L. REV. 1055, 1078 (1973)). The *Parker* court used this argument to rebut the claim that the *corpus delicti* doctrine encourages sound law enforcement techniques. *But cf.* State v. Trexler, 77 N.C. App. 11, 16-18, 334 S.E.2d 414, 417-18 (1985) (Becton, J., concurring) (arguing that the *corpus delicti* doctrine places the burden of proof where it belongs—on the shoulders of the State), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986).

93. 77 N.C. App. 11, 334 S.E.2d 414 (1985), *rev'd*, 316 N.C. 528, 342 S.E.2d 878 (1986).

94. The North Carolina Court of Appeals decided *Trexler* on October 1, 1985; the supreme court decided *Parker* on December 10, 1985. Subsequently, the supreme court reversed the court of appeals decision in *Trexler* and sustained defendant's conviction for driving while intoxicated. State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986). This decision further confuses issues that the supreme court initially raised in *Parker*. *See infra* note 116 and accompanying text; *supra* note 36.

95. A witness testified that a "loud noise" awoke him and that when he peered outside he saw defendant's automobile lying upside down on the highway. Defendant did not appear at the scene of the accident until later that same night. When questioned by an officer whom the witness had called, "defendant told him he had been driving the automobile at the time of the accident." *Trexler*, 77 N.C. App. at 12, 334 S.E.2d at 414-15. The defendant registered a blood alcohol content of .14%, which exceeds the level that constitutes driving while impaired under N.C. GEN. STAT. § 20-138.1 (1983). For additional information on the facts of *Trexler*, see State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986).

96. *See supra* note 95. In North Carolina, prior to *Parker*, apparently all admissions and confessions required independent corroboration by evidence of the *corpus delicti*. *See supra* notes 62-65 and accompanying text.

that he had been driving the car when the accident occurred.[97] In the majority opinion, Judge Webb openly criticized the position previously taken by the North Carolina Supreme Court[98] and urged that "[c]onfessions can be good evidence and should not be excluded by a rule which is not supported by reason."[99] In a concurring opinion, Judge Becton argued otherwise[100] and eloquently defended the viability of the *corpus delicti* doctrine.[101] Judge Martin, on the other hand, dissented and expressed the view that sufficient evidence supported defendant's conviction.[102]

A second reason cited by the *Parker* court for abandoning the *corpus delicti* doctrine pertained to the development of "modern" procedural safeguards: "the concern[s] that the defendant's confession might have been coerced or induced by abusive police tactics . . . have been undercut by the principles enunciated in *Miranda v. Arizona*[103] . . . and the development of similar doctrines relating to the voluntariness of confessions which limit the opportunity for over-zealous law enforcement."[104] Federal law has "constitutionalized" not only the recitation of

97. *Trexler*, 77 N.C. App. at 12, 334 S.E.2d at 414-15.

98. In State v. Brown, 308 N.C. 181, 301 S.E.2d 89 (1983), *overruled by Parker*, 315 N.C. 222, 337 S.E.2d 487, the North Carolina Supreme Court reversed an arson conviction because the State had failed to prove that *someone's* criminal act caused the blaze: "Even though the defendant's confession identifies him as the person who committed the burning, the State must first establish the *corpus delicti*, that a crime was in fact committed." *Id.* at 183, 301 S.E.2d at 90. This decision comports with traditional requirements under the *corpus delicti* doctrine. *See supra* text accompanying notes 44-46. Judge Webb in *Trexler*, however, complained that "*Brown* marked a radical departure from prior law in this state." *Trexler*, 77 N.C. App. at 16, 334 S.E.2d at 417. He also made "a few additional comments in the hope that our Supreme Court will reconsider this rule and overrule *Brown*." *Id.* at 13, 334 S.E.2d at 415.

99. *Trexler*, 77 N.C. App. at 16, 334 S.E.2d at 417.

100. *Id.* at 16-18, 334 S.E.2d at 417-18 (Becton, J., concurring).

101. Judge Becton suggested that, without the doctrine, more rather than less ambiguity would envelop confessions in a criminal case. *Id.*; *see supra* note 75. Moreover, he stressed that the State assumes the burden of proof in criminal cases and that the State simply failed to present adequate evidence in the instant case. Eyewitness testimony of other circumstantial evidence could have sustained a conviction. *Trexler*, 77 N.C. App. at 17, 334 S.E.2d at 418 (Becton, J., concurring).

102. *Trexler*, 77 N.C. App. at 18-19, 334 S.E.2d at 418-19 (Martin, J., dissenting). Judge Martin found supporting authority in State v. Snead, 295 N.C. 615, 247 S.E.2d 893 (1978), a DWI case which similarly involved questions of evidentiary sufficiency. *See also* State v. Helms, 16 N.C. App. 162, 191 S.E.2d 375 (1972) (upholding conviction for DWI based on strongly corroborating evidence); Kyle v. State, 208 Tenn. 170, 344 S.W.2d 537 (1961) (upholding DWI conviction based on circumstantial evidence that defendant had in fact been driving the car). *But see* State v. Hamrick, 19 Wash. App. 417, 576 P.2d 912 (1978) (reversing DWI conviction based on inadequate evidence of the *corpus delicti*). Judge Martin, however, based his dissent on a faulty reading of the North Carolina Supreme Court's decision in *Franklin*. He misinterpreted that decision to stand for the proposition that North Carolina no longer required independent evidence of the *corpus delicti*. *See Trexler*, 77 N.C. App. at 18, 334 S.E.2d at 418 (Martin, J., dissenting). For further discussion of *Franklin*'s significance, see *supra* notes 64, 80.

103. 384 U.S. 436 (1966). The *Miranda* Court established procedural safeguards in the form of warnings detailing a defendant's rights, which police officers must give the defendant prior to any "custodial interrogation." *See id.* at 478-79.

104. *Parker*, 315 N.C. at 234, 337 S.E.2d at 494. The voluntariness doctrine, which tests "whether the confession 'was made under circumstances that would reasonably lead the person charged to believe that it would be better to confess himself guilty of a crime he had not committed,' " originated at common law but has constitutional underpinnings. H. BRANDIS, *supra* note 40, at 65-66 (quoting State v. Grier, 203 N.C. 586, 166 S.E. 595 (1932)). Even today, "[t]he North Carolina cases continue to state that 'voluntariness remains the test of admissibility of a confession,' but, of course, this is interpreted in the light of the controlling federal cases." *Id.* at 67 (quoting State v. Moore, 301 N.C. 262, 271 S.E.2d 242 (1980)).

Miranda rights to criminal suspects undergoing interrogation, but also "the requirement that criminal convictions rest on evidence proving guilt beyond a reasonable doubt."[105] Moreover, North Carolina still recognizes the voluntariness doctrine as an additional state law safeguard.[106]

Finally, the *Parker* court renounced the *corpus delicti* doctrine because it viewed the "trustworthiness" doctrine as a better alternative to confession corroboration.[107] One commentator has succinctly explained and distinguished the two doctrines as follows:

> The trustworthiness version of corroboration, which emphasizes the inherent unreliability of some confessions, requires the prosecution to produce evidence corroborative of the confession's reliability. This evidence need not directly tend to prove the corpus delicti; it is often said that it may in fact be wholly collateral to the crime itself. The corroboration, however, directly relates to the trustworthiness of the important facts contained in the defendant's statement, whereas the corpus delicti version is more concerned with the elements of the offense.[108]

In support of its decision, the *Parker* court stressed that the trustworthiness doctrine "provides greater assurance against the use of an unreliable confession"[109] and represents a more " 'flexible rule.' "[110] Moreover, virtually all federal courts[111] and several state courts[112] have adopted the new rule.

Despite the valid criticisms leveled against the *corpus delicti* doctrine, the *Parker* court failed to recognize some of the doctrine's potential attributes. The doctrine arguably encourages more thorough law enforcement efforts[113] and establishes a minimum threshold evidentiary standard, thereby avoiding some ambiguity that otherwise might arise.[114] Certainly, the trustworthiness doctrine generates its own set of problems and confusion,[115] and a recent North Carolina Supreme Court decision reflects a fundamental misapprehension of its import.[116]

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105. MCCORMICK, *supra* note 12, at 370-71.

106. *See supra* note 104.

107. *See Parker*, 315 N.C. at 234-36, 337 S.E.2d at 494-95.

108. Note, *supra* note 8, at 1217.

109. *Parker*, 315 N.C. at 234, 337 S.E.2d at 494.

110. *Id.* (quoting State v. Yoshida, 44 Hawaii 352, 357-58, 354 P.2d 986, 990 (1960)). Consider the observation of one student commentator: "In many cases, in fact, trustworthiness corroboration and *corpus delicti* corroboration lead to identical results. The former's advantage lies in its simplicity and its direct bearing on the reliability of facts stated in the confession or admission." Note, *supra* note 8, at 1219.

111. *See supra* notes 54, 56 and accompanying text.

112. *See* WIGMORE, *supra* note 13, § 2071, at 511 n.3. Nevertheless, the "vast majority" of states still recognize the *corpus delicti* doctrine. MCCORMICK, *supra* note 12, at 366.

113. *See supra* note 76.

114. *See supra* notes 72-76, 101-02 and accompanying text.

115. Although the trustworthiness doctrine adopted by the *Parker* court provides flexibility, problems may arise when the courts attempt to define trustworthiness. In the aftermath of *Parker*, North Carolina trial courts may experience substantial difficulties in this regard. *See infra* notes 131-40 and accompanying text.

116. *See Trexler*, 316 N.C. 528, 342 S.E.2d 878. The supreme court reversed the court of appeals and sustained defendants conviction for driving while intoxicated. *Id.* at 535, 342 S.E.2d at 882. Chief Justice Branch's opinion in *Trexler* apparently confused the requirements of the *corpus delicti* doctrine with those of the trustworthiness doctrine; although *Trexler* would suggest that the

In addition, modern procedural safeguards have not eliminated all the concerns traditionally addressed by the *corpus delicti* doctrine. The *Miranda* decision[117] and North Carolina's voluntariness doctrine[118] simply do not guard against the possibility of false or misleading confessions or admissions. In theory and in practice the *corpus delicti* doctrine establishes an additional evidentiary test for sustaining a defendant's conviction.[119] Further, the need for a demanding corroboration requirement has assumed great importance today, as commentators begin to question the effectiveness of the procedural constitutional safeguards.[120]

Moreover, conceding the possible merits of the trustworthiness doctrine, the *Parker* decision raises several issues that demand careful consideration. First, how should the courts interpret the scope of the decision? The *Parker* court clearly stated that its rulings apply only to "non-capital cases."[121] This statement apparently signifies that the former *corpus delicti* doctrine still applies to first-degree homicide cases,[122] while apparently it leaves undisturbed the court's holding in *State v. Franklin*.[123] The potential for convictions based on erroneous confessions or admissions, however, does not diminish when the State prosecutes a defendant for a noncapital rather than a capital offense.[124] Justice Billings alluded to no other jurisdiction that makes this distinction.[125] Apparently, the *Parker* court mistrusted its own logic and preferred to preserve the

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corpus delicti doctrine has survived *Parker*, *see id.* at 532-34, 342 S.E.2d at 880-82, this Note reasons otherwise. *See supra* note 36.

117. 384 U.S. 436 (1966). *See supra* notes 39, 103 and accompanying text for a discussion of *Miranda's* relevance to the *corpus delicti* doctrine.

118. *See supra* notes 4, 58 & 104 and accompanying text for a discussion of the voluntariness doctrine and its relevance to the *corpus delicti* doctrine.

119. According to one student commentator,

> Voluntariness is the one basic standard which is applied to all statements, in order to determine their admissibility. Requiring independent proof of the *corpus delicti* is another. Holding that the concept of voluntariness is constitutionally required has little or no bearing on establishing that the corpus delicti rule, which merely embodies an additional test for admission of the confessions, is required as well.

Comment, *California's Corpus Delicti Rule: The Case for Review and Clarification*, 20 UCLA L. REV. 1055, 1085 (1973).

120. *Miranda* did not address some issues that continue to chip away at the accused's procedural protections. *See, e.g.*, Goldberg, Escobedo *and* Miranda *Revisited*, 18 AKRON L. REV. 177, 182 (1984) (concluding that "the present [United States Supreme] Court has consigned *Escobedo* to the ash heap of legal history and *Miranda* is twisting slowly in the wind"); Note, *supra* note 8, at 1209 n.28 (conceding that *Miranda* raises some difficulties today and that commentators still debate its effectiveness). At the same time, one student commentator has suggested that a recent North Carolina Supreme Court decision, State v. Thomas, 310 N.C. 369, 312 S.E.2d 458 (1984), "might have hastened a course of uncertainty in the application of North Carolina's voluntariness standards . . . . [The result] might mean future abuse as both courts and law enforcement officials attempt to function with diminishing or minimal guidelines." Note, *supra* note 4, at 1227.

121. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495.

122. *See supra* note 65.

123. 308 N.C. 682, 304 S.E.2d 579 (1983). *Parker* overruled "language" in *Franklin* without disturbing its basic holding or premise. *Parker*, 315 N.C. at 239, 337 S.E.2d at 497. For a discussion of *Franklin*, see *supra* note 80 and accompanying text.

124. *See Developments*, *supra* note 62, at 1081; *see also Trexler*, 77 N.C. App. at 16-18, 334 S.E.2d at 417-18 (Becton, J., concurring) (arguing that a confession, absent some corroborating evidence of the *corpus delicti*, should not sustain a conviction for drunk driving).

125. A review of case law uncovers no jurisdiction that applies the trustworthiness doctrine to noncapital cases exclusively. Rather, those jurisdictions that have adopted the doctrine apparently

traditional version of the *corpus delicti* doctrine in homicide cases.[126]

Second and more important, the *Parker* court did not conclusively resolve how trial courts should determine "trustworthiness." The decision seemingly posits a rigorous standard: "when independent proof of loss or injury is lacking, there must be *strong* corroboration of *essential* facts and circumstances embraced in the defendant's confession. Corroboration of insignificant facts or those unrelated to the commission of the crime will not suffice."[127] To demonstrate how a court should determine trustworthiness, the court carefully analyzed the facts in *Parker*. Defendant had committed multiple offenses,[128] and details in his confession closely paralleled the evidence presented at trial.[129] Further, defendant had ample motive and opportunity to commit the additional robbery charged.[130]

In principle the *Parker* doctrine is sound, but the decision provides lower courts with little guidance on how to apply the doctrine in other cases. Courts in other jurisdictions have encountered some problems in assessing trustworthiness,[131] and now the North Carolina courts may experience similar difficulties.[132] Justice Billings stressed that "under the *particular* facts presented in this case, . . . there was sufficient corroborative evidence to bolster the truthfulness of

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use it in every case. *See, e.g.*, State v. Zarinsky, 143 N.J. Super. 35, 362 A.2d 611 (App. Div. 1976) (trustworthiness doctrine applied in first degree homicide case).

126. *See supra* note 65. In the great majority of jurisdictions, a homicide conviction may depend entirely on circumstantial evidence, without the finding of a body or eyewitness testimony of the homicidal act. *See* WIGMORE, *supra* note 13, § 2081, at 450 n.8. Apparently, in the aftermath of *Parker*, the State still must prove its case with independent evidence of the elements of a capital offense. At least one appellate court has argued strenuously that the *corpus delicti* doctrine should not apply to exonerate a defendant who has confessed to the murder of his victim. *See* State v. Ralston, 67 Ohio App. 2d 81, 425 N.E.2d 916 (1979).

127. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495.

128. The State had prosecuted Parker for the murders and robberies of Leslie Levon Thorbs and Ray Anthony Herring. *See supra* notes 14-26 and accompanying text.

129. In the *Parker* opinion Justice Billings carefully described how the evidence matched details in defendant's confession. *Parker*, 315 N.C. at 238, 337 S.E.2d at 496. The *Parker* court particularly stressed that "defendant was charged with multiple offenses; the *corpus delicti* as to the more serious offenses was established independently of the defendant's confession; an element of the crime, use of a deadly weapon, was also established by independent evidence; and the State's evidence closely paralleled the defendant's statements." *Id.*

130. For a description of the facts of the case, see *supra* notes 14-27 and accompanying text.

131. New Jersey and New Mexico have adopted the trustworthiness doctrine. In State *ex rel.* J.P.B., 143 N.J. Super. 96, 362 A.2d 1183 (App. Div. 1976), the trial court had adjudged defendant delinquent upon a finding that he had robbed and murdered his victim. The appellate court overturned defendant's conviction because his statements "contain[ed] *no* specific details which . . . could have been corroborated by the known facts" and because defendant's statements "contain[ed] many discrepancies." *Id.* at 112-13, 362 A.2d at 1192 (emphasis added). In a dissenting opinion, however, Judge Carton found "more than sufficient corroborating evidence tending to establish that the defendant was telling the truth." *Id.* at 119, 362 A.2d at 1195 (Carton, P.J., concurring in part and dissenting in part). Similarly, in Doe v. State, 94 N.M. 548, 613 P.2d 418 (1980), the majority and dissenting opinions disagreed vehemently over the issue of trustworthiness. *Compare id.* at 549, 613 P.2d at 419 (overturning defendant's conviction for shoplifting because "the corroborating evidence is not sufficient to establish the reliability of the confession in light of the circumstances in this case"), *with id.* at 549-50, 613 P.2d at 419-20 (Easley, J., dissenting) (stating that "[i]t is abundantly clear that Doe's confession . . . was corroborated by other substantial circumstantial evidence").

132. The North Carolina Supreme Court recently decided a case that will generate additional confusion among the lower courts. In State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986), the supreme court seemingly confused the *corpus delicti* doctrine with the trustworthiness doctrine and attempted to revive the former doctrine. The two doctrines involve different approaches to confes-

the defendant's confession and to sustain a conviction."[133] She did not indicate whether a defendant's confession or admission[134] would survive judicial scrutiny if the defendant had committed a single offense, if the defendant were harrassed or bewildered when he or she admitted guilt, if the defendant were physically or emotionally unstable, or if the independent evidence were available but the State simply failed to present it.[135] It is unclear whether prior decisions decided under the *corpus delicti* doctrine would have resulted in different rulings under the trustworthiness doctrine.[136] The outcome would have depended on the specific court's view of trustworthiness.

A strict interpretation of *Parker* would ensure that trial courts do not routinely and automatically sustain convictions that are based on the accused's incriminatory statements. Trial judges must recognize that a full-blown confession presents more opportunities for corroboration than do mere admissions;[137] thus, confessions should carry greater weight when determining trustworthiness. Every time the State relies on a defendant's confession or admission to sustain a conviction, and the State offers no independent evidence of a key element of the offense charged, the court should carefully weigh the following factors:[138] (1) the emotional, physical, and psychological state of the defendant

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sion corroboration, yet the *Trexler* decision did not purport to overrule *Parker*. *See id.* at 532-34, 342 S.E.2d at 880-82. For further discussion of *Trexler*, see note 36.

133. *Parker*, 315 N.C. at 238, 337 S.E.2d at 496 (emphasis added).

134. For definitions and a distinction between admissions and confessions, see *supra* note 63.

135. In State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986), the North Carolina Supreme Court implied that the State must use independent evidence of the *corpus delicti* of a crime when that evidence exists. *See id.* at 880-82.

136. For example, in *Trexler*, 77 N.C. App. 11, 334 S.E.2d 414 (1985), *rev'd*, 316 N.C. 528, 342 S.E.2d 414 (1986), the North Carolina Court of Appeals held that the *corpus delicti* doctrine required a reversal of defendant's conviction for driving while intoxicated. In this pre-*Parker* decision, Judge Becton's concurring opinion indicated that he would not have upheld defendant's conviction for DWI even under the new *Parker* rule. *Id.* at 16-18, 334 S.E.2d at 417-18. (Becton, J., concurring). Judge Webb's opinion, however, definitely indicated that he would have sustained defendant's conviction under the new rule: "confessions can be good evidence and should not be excluded by a rule which is not supported by reason." *Id.* at 17, 334 S.E.2d at 417. For further discussion of *Trexler*, see *supra* notes 36, 93-102.

137. *See supra* note 63. Defendant in *Parker* essentially made an incriminatory *admission* when he said "I got . . . $10.00 from the other guy." *See supra* note 21 and accompanying text. Yet this admission appeared in the context of an eight-page confession. *See supra* note 19 and accompanying text.

138. A review of state and federal cases reveals no explicit listing of those factors that would contribute to the trustworthiness of a confession or admission. Nevertheless, some factors may be gleaned from the context of decisions. For example, courts may look to whether the defendant's statements were convincing. *See, e.g.*, United States v. Basile, 771 F.2d 307, 311 (7th Cir. 1985) (upholding defendant's conviction for mail fraud because he "told what he was going to do . . . and afterwards he said he had done it that way. He is very convincing."). Courts also may consider the defendant's familiarity with co-conspirators in a conspiracy case, as well as some evidence of an overt act, whether criminal or not. *See, e.g.*, United States v. Todd, 657 F.2d 212, 216-17 (8th Cir. 1981) (finding insufficient corroborative evidence to support a conviction for conspiracy to rob or to commit first degree murder, but sufficient evidence to convict defendant for conspiracy to commit second degree murder). Courts may look at the source of the admission or confession. *Compare* United States v. Fearn, 589 F.2d 1316, 1322-24 (7th Cir. 1978) (overturning defendant's conviction for fraud apparently because the court discounted the testimony of defendant's landlord who had reported defendant's alleged admission of guilt) *with Basile*, 771 F.2d at 311 (upholding a conviction based on defendant's surreptitiously recorded statements because "[defendant] is very convincing on the tapes"). The accuracy of the defendant's description of the victim and the scene of the crime may also be important factors. *See, e.g.*, State *ex rel.* J.P.B., 143 N.J. Super. 96, 362 A.2d 1183

at the time of the confession or admission; (2) the amount of detail in the defendant's statements; (3) the availability of evidence that directly corroborates key elements of each offense charged; (4) whether the defendant has committed a single offense or multiple offenses; and (5) as suggested by the *Parker* court, whether defendant had a realistic opportunity to commit the crime.[139] The determination of trustworthiness will always involve some subjectivity, and courts should resolve any doubts in favor of the defendant.[140]

In *Parker* the North Carolina Supreme Court abandoned the requirement that evidence independent of the defendant's confession prove the *corpus delicti* of a noncapital offense. Justice Billings spoke for a unanimous court when she criticized the *corpus delicti* doctrine as confusing, outmoded, duplicative, and ineffective. To ensure that the State never convicts an innocent defendant, the *Parker* court adopted the doctrine recognized by almost all federal courts and several state courts—the trustworthiness doctrine. The two doctrines approach confession corroboration from different vantage points: the *corpus delicti* doctrine focuses on independent evidence of key elements of the offense charged, while the trustworthiness doctrine demands only that the State present evidence corroborating a defendant's confession. In effect the two doctrines often may reach the same result. However, the *Parker* court failed to address several issues that require further consideration, including the scope of the decision and the factors that contribute to a confession's trustworthiness. The *corpus delicti* doctrine was subject to misinterpretaion by the courts, but it at least posed an evidentiary threshold that afforded some protection for criminal defendants. Unless trial courts thoroughly analyze all factors relevant to a finding of trustworthiness, the new doctrine may lead to greater inconsistencies and may jeopardize suspects' rights.

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(App. Div. 1976) (commenting on ambiguities implicit in defendant J.P.B.'s confession). Finally, courts may check for internal consistencies evident in the defendant's confession or admission. *See, e.g., id.* (commenting on inconsistencies apparent in defendant's confessions).

139. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495 (stating the "rule" that defendant's confession may support a conviction if the State presents "facts that tend to show the defendant had the opportunity to commit the crime," *inter alia*). The *Parker* decision at least implicitly would require independent evidence of the last four factors. *See supra* note 129 and accompanying text. For a description of other factors that courts should consider, see *supra* note 138.

140. Ultimately, of course, the state must prove beyond a reasonable doubt that the defendant has committed a crime, and the United States Supreme Court has "constitutionalized" this standard. *See* Jackson v. Virginia, 443 U.S. 307 (1979); MCCORMICK, *supra* note 12, at 371 n.37 (discussing *Jackson*). Nevertheless, in its application, the trustworthiness doctrine necessarily would require that defendant come forward with some evidence of untrustworthiness, namely, that defendant's confession or admission is unreliable and hence should not support a conviction without independent evidence of the *corpus delicti*. For one view of how the burden of proof should operate in a trustworthiness jurisdiction, see Note, *supra* note 8, at 1236-40. The author notes that

> [t]he defendant must first make a reasonable showing that the contested facts are untrue. Upon this showing, the burden shifts to the prosecutor, who may establish the facts as reliable by offering circumstantial or direct evidence of the facts at issue, or by attacking the credibility of the defendant's claim.

Id. at 1238.