

Legal aspect of medicine

Homicide Distinction

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Introduction

Forensic science serves as the vital piece of a puzzle in crime investigation where its importance cannot be ignored. The advancement of technology in recent decades has established a vast range of techniques used for post mortems analysis, which are extremely useful in crime investigation. It is able to provide strong evidence in court with up to 99.99% accuracy (Peterson *et al.*, 1986). It can be also used in aid to prove the innocence of an individual in court and ultimately distinguish between innocent, manslaughter and murder. In some cases, science related evidence may not be necessary and can be as simple as an alibi, which can waive the suspicion off the suspect. Though, to specifically distinguish between manslaughter and murder further extensive investigation is needed by the jury for analysis to provide the. To provide the final verdict the jury must consider the following: establish the individual's motive, intention, mental state, victim cause of death, and the conditions the alleged suspect was under to commit the act with the use of (The Crown Prosecution Service, N.D.)

In court, the cause of death often dictates the defendant's fate. Occasionally, the alleged suspect may not have done anything directly resulting in the victims' death, yet without forensic evidence the jury may consider it as murder or possibly manslaughter. (The Crown Prosecution Service, N.D.)

Manslaughter carries a lesser sentencing than murder itself and is commonly seen as a way out of weightier punishment by criminals, especially if proven they are mentally instable in which they cannot be punished by law (Ogloff *et al.*, 1993). The definition of manslaughter share similar characteristics to murder but a murder case often gets a life sentence of 30 years minimum. However, according to the Criminal Justice Act 2003, the sentence can be as short as 3 years for the higher level of provocation manslaughter (Sentencing Guidelines Council, 2005)

The true meaning of manslaughter can vary from jurisdiction to jurisdiction due to different international law bodies. The Crown Prosecution service in the UK has set up clear guidelines for homicide distinction, which involve the intention to kill or cause grievous bodily harm. Many other additional factors may lessen the culpability of the crime. This is known as voluntary and involuntary manslaughter. Both carry different sentences and can be divided into different sub categories to define the true nature of a crime (Etherton *et al.*, 2006).

Voluntary manslaughter is a crime in which the suspect has the intention to kill or cause serious harm but without the aforethought to kill yet resulting in accidental killing of the victim, due to loss of control. The jury would normally consider this when there are factors which can reduce the accountability of the crime. Infanticide is equivalent to voluntary manslaughter. It is commonly seen as the mother temporary losing her mental stability due to post natal depression that distorts her to an extent to kill her baby. Nonetheless, this would require forensic expert and other expert witnesses to provide reasonable belief of evidence to prove this loss of control (Etherton *et al.*, 2006).

Furthermore, involuntary manslaughter often carries a lesser sentence albeit voluntary manslaughter as it lacks the motive to kill a person, which in most cases resulted from negligence and recklessness. Constructive manslaughter is the unlawful dangerous acts resulting in death of an individual, for example death to individual by vehicular speeding. Gross negligence manslaughter mainly consists of wilful blindness. It is seen as lawfully acceptable but in society, failure to comply

with their given duty resulting in death of an individual can lead to criminal liability. Gross negligence manslaughter typically applies to professional occupations e.g. doctors, teachers, electricians. (The Crown Prosecution Service, N.D.)

Murder is very similar to voluntary manslaughter; it involves the killing of an individual with malice aforethought. It shares similar characteristics but without any reasonable factors which can reduce the culpability of the crime. All homicide will initially be considered as murder and with evidence it can deviate to manslaughter or even lawful killing in some self-defence cases (Serran and Firestone, 2004).

Discussion

It is fundamental that forensic evidence can provide an accurate cause of death; it is a vital piece of evidence used in court dictating the outcome of a court case contributing greatly to the jury's final verdict (Acker, 2003). Forensic science can provide evidence to give sub category manslaughter sentences. The definition between murder and manslaughter can be clear but vague at times. Most jurisdictions have consistent guidelines available, but can simply be blurred by lawyers in court to alter the degree of murder. Therefore, the implication of forensic science is highly considered in court to achieved full fairness in every case (Ryan and Sphantzer, N.D.).

All homicide trials require extensive evidence from forensic scientists to deviate from murder. There are famous cases around the globe which can be used to set a good example of homicide distinction. As mentioned in the introduction, manslaughter and murder have a clear set of guidelines but it is commonly blurred by lawyers to help defend their clients (Schirow, N.D.). Forensic science helps to put a vibrant marker between manslaughter and murder (Acker, 2003). The major difference between manslaughter and murder originate from the intention of the offender. Majority of jurisdictions believe manslaughter only applies when the offender does not have the intention to kill the victim, even though has the *mens rea* to inflict grievous bodily harm to that specific individual (Peterson *et al.*, 1986)

The death of Ian Tomlinson back in the 2009 during the G20 summit protest demonstrated the impact of forensic evidence in the UK. Newspaper vendor, Tomlinson was attacked by police officer Simon Harward on his way home from work. Harward forcefully stroke his leg with a baton and pushed him to the ground, which was believed to have triggered a heart attack leading to the collapse of Tomlinson one minute later. The First post-mortem conducted in 3rd April 2009, believed Tomlinson died resulting from a heart attack but further post-mortems conducted in 9th April to 22nd April by three other pathologists found massive bleeding around the abdominal area caused by blunt force trauma and liver cirrhosis. The independent police complaint commission (IPCC) were initially reluctant to press charges against Harward but as post-mortems suggested blunt force trauma in his abdominal area induced massive bleeding, Harward was later put on trial in Southhawk Crown. He was found not guilty on 19th July 2012 (Walker *et al.*, 2012 and BBC News UK, 2013). due to insufficient evidence but was dismissed from the police force later in September due to gross conduct (Walker, 2012).

Another famous incident demonstrating the significance of forensic science is the death of Michael Jackson. Michael Jackson was found dead in his home by his personal physician Dr Conrad Murray on the 25th June 2009. The Los Angeles Medical examiners found acute propofol and benzodiazepine

intoxication within Jacksons' system in the first post-mortem (Doheny, 2009). Dr Christopher Rogers described Jackson as a perfectly healthy individual with no indication of heart problems apart from a chronically inflamed Lung, which did not contribute to Jacksons' death. Therefore with this evidence, Dr. Murray was put on trial of involuntary manslaughter and was convicted successfully committed with strong positive evidence from forensic experts due to substandard medical care towards Michael Jackson (Express, 2011).

All homicide cases in court usually are considered as murder initially. In law, crime itself and sentencing are often dictated by aggravating & mitigating factors. These factors are considered to lower the degree of sentence and used by judges to dictate appropriate punishment (The Crown Prosecution Service, N.D.). For example, heart stab and chest slash may yield different penalties. Also, mitigating factors like insanity are occasionally used in homicide cases to waive the liability of the defendant completely, resulting in non-guilty outcome (Sentencing Guidelines Council, 2005).

Furthermore, other numerous factors would be considered before putting someone on trial. In knife crime, the coroner would examine the number of wounds, angle of the blade and possibly clothing around the area. It will be similar for firearm related homicide but with the addition of investigation on gun residue and firing distance (Acker, 2003). It is also vital to examine injuries produced before and after death. Hanging would commonly cause inverted V bruises with minor facial bleeding, whereas ligature strangulation would leave a parallel bruise, resulting in darkening of facial and neck area from blood flow obstruction (Acker, 2003).

Lastly, it is known for lawyers of the defendant to protect his clients to an extent of manipulating the Law systems, same applies for prosecutors. The crossover of homicide charges is achievable with a simple deviation of words or eliminating evidence in court. Evidence handling procedures and crime scene preservation is often questioned to exploit possible leak holes. Consequently, accurately recorded evidence provides strong distinctions between lawful-killing, manslaughter and murder (Schiro, N.D.)

Conclusion

To conclude, forensic science proves to have great significance in court cases in which the jury should take into serious consideration. The two case studies above suggest the importance of science in a non-discriminatory trial. But is not a wise to overlook other vital elements of the individual e.g. mental state, situational factors etc., to obtain a full picture of the crime. It is fair to say forensic science alone contributes a substantial proportion towards the final verdict to all homicide distinction cases. It may be possible to blur jurisdictions but not forensic evidence.

Reference

- Acker, M. 2003. Murder and Suicide? How you can tell the difference [Online]. Available at: <http://www.writing-world.com/mystery/suicide.shtml> [Accessed: 09 Dec 2013]
- BBC News. 2013. Timeline: Ian Tomlinson's death [Online]. UK: BBC News UK. Available at: <http://www.bbc.co.uk/news/uk-10728685> [Accessed: 09 Dec 2013].
- Doheny, K. 2009. Propofol plus sedative killed Micheal Jackson [Online]. LA: WedMD News. Available at: <http://www.webmd.com/pain-management/news/20090828/propofol-plus-sedative-killed-jackson-coroner> [Accessed: 09 Dec 2013].
- Etherton, J., Beale, H., Bridge, S., Horder, J., Park, K. 2006. LAW COM No 304 Murder, manslaughter and infanticide. London: The Law Commission
- Express. 2011. Forensics expert still convinced Jackson's death was homicide [Online]. Available at: <http://www.express.co.uk/news/showbiz/222695/Forensics-expert-still-convinced-Jackson-s-death-was-homicide> [Accessed: 09 Dec 2013]
- Ogloff, J.R.P., Roberts, C.F., Roesch, R. 1993. The insanity defence: Legal standards and clinical assessment. *Applied and preventative psychology* 2(3), p. 163-178.
- Peterson, J.L., Ryan, J.P., Houlden, P.J., Mihajovic, S. 1986. Forensic Science and Court: The uses and effects of scientific evidence in criminal processing [Online] USA: US Department of Justice. Available at: <https://www.ncjrs.gov/pdffiles1/pr/102387.pdf> [Accessed: 09 Dec 2013].
- Ryan, D.J., Shpantzer, G. N.D. Legal aspect of digital forensics [Online]. Available at: <http://euro.ecom.cmu.edu/program/law/08-732/Evidence/RyanShpantzer.pdf> [Accessed: 09 Dec 2013].
- Schiro, G. N.D. Protecting the Crime Scene [Online]. LA: Louisiana State Police Crime Laboratory. Available at: <http://www.crime-scene-investigator.net/evidenc1.html> [Accessed: 09 Dec 2013].
- Sentencing Guidelines Council. 2005. Manslaughter by Reason of Provocation [Online]. Available at: http://sentencingcouncil.judiciary.gov.uk/docs/Manslaughter_by_Reason_of_Provocation.pdf [Accessed: 09 Dec 2013].
- Serran, G., Firestone, P. 2004. Intimate partner homicide: a review of the male proprietariness and the self-defense theories. *Aggression and violent behaviour*: 9(1), p. 1-16.
- The Crown Prosecution Service. N.D. Homicide: Murder and Manslaughter [Online], Available at: http://www.cps.gov.uk/legal/h_to_k/homicide_murder_and_manslaughter/ [Accessed: 09 Dec 2013].
- Walker, P. 2012 Ian Tomlinson case: PC Simon Hardward sacked for gross misconduct [Online]. Available at: <http://www.theguardian.com/uk/2012/sep/17/simon-harwood-sacked-gross-misconduct> [Accessed: 09 Dec 2013].

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Walker, P., Lewis, P., Dodd, V. 2012 Simon Harward Cleared of killing Ian Tomlinson, but questions remain [Online]. Available at: <http://www.theguardian.com/uk/2012/jul/19/ian-tomlinson-case-simon-harwood-cleared> [Accessed: 09 Dec 2013].