

CRIME SCENE RECONSTRUCTION - AUXILIARY MEANS OF EVIDENCE AND EVIDENCE PROCEEDINGS

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Abstract: It is obvious that the crime scene reconstruction, as well as the crime scene investigation, is an ancillary criminal procedure that contributes to the achievement of the criminal case goal. Hence its character of evidence proceedings, that is the mode of operation for detecting, securing, collecting or specifying the status and position of certain evidence.

As for the evidence value of the crime scene reconstruction, it should be emphasized that the activity itself, as evidence proceedings, and the minutes with the results as written evidence, have value to the extent that they are corroborated with all other evidence. If this general rule and this activity are well established, they may lead to the discovery of new evidence in support of proving the guilt of the person under investigation. Other times, the reconstruction contributes to securing conclusive useful evidence of simple clues or questionable evidence or, where appropriate, to removing them as worthless.

Thus the crime scene reconstruction comes as evidence proceedings with specific features.

Keywords: *crime, assumptions, version, judicial experiment, crime scene investigation, experiment investigation*

1. INTRODUCTION

Given the views expressed in literature, regulating the reconstruction in criminal procedure law and including it among the evidence were dictated by both the necessity to broaden the possibilities of finding the truth about the deed that is subject of the criminal investigation, and to sanction by legislation an evidence proceeding used quite frequently in criminal investigations.

In accordance with the criminal procedure law the prosecuting authority or the court may proceed if they find it necessary, for verification and provision of accurate data, to make a crime scene reconstruction, in whole or in part, the manner and conditions under which the deed was committed.

In literature was noted that the crime scene reconstruction is essentially a procedure ancillary activity, an evidence procedure meant to contribute to achieving the purpose of the criminal proceedings. It was further noted that the reconstruction is a form of auxiliary research at the crime scene that can verify whether the facts and circumstances of the case were committed in a particular way.

In relation to these doctrinal views the reconstruction was defined as a criminal procedure and strategic activity consisting of the artificial reproduction of the circumstances in which an offence was committed, as well as any important fact, in order to establish whether the deed was committed or could have been committed under the given circumstances.

With reference to terminology, some clarifications must be made, given that sometimes the prosecution body, in general, and the criminal investigation body, in particular, use terms like 'judicial experiment' and 'experiment investigation' although the same activity proceedings are considered. Other times, indicating the trail of the perpetrator to the crime scene, his itinerary there and the ways used to leave the crime scene is called crime scene investigation.

The judicial practice established the term 'reconstruction' as it is used by the criminal procedure law starting from the idea that the term 'experiment' would appoint an artificial reproduction of a phenomenon under the most favourable conditions for its study of and the laws that govern it. The term 'reconstruction' was used and no other synonymous terms that can create confusion or give the idea that we deal with distinct activities with different goals and purposes.

In the literature regarding the criminal procedure law and criminology, legal provisions on reconstruction are viewed in a broader sense, this interpretation being imposed in the practice of most criminal investigation bodies and other judicial bodies.

Reconstruction is not only about verifying statements of the defendant made during the criminal investigation, or simply persuading the judicial body regarding some concrete way of committing the offence already proven by other evidence.

Thus, we believe that since the criminal procedure law has established the term 'reconstruction', it must be used consistently in both the legal practice and in the literature that addresses this activity.

2. BODY OF ARTICLE

The need for reconstruction is given by the uncertainties that may arise on certain evidence resulted from the various strategic activities or statements of parties, enquiries, expert opinion, etc.

We can state that this is a strategic activity that reproduces fully or partially circumstances of the individual case, facts or sequences, which have occurred before, during or after the commission of crime, thus checking the existing evidence under the concrete conditions and with the resources resulting from the offence or obtaining new evidence.

The crime scene reconstruction should not be confused with the judicial experiment.

The judicial body organizes the crime scene reconstruction, if they are in doubt about the content of the criminal activity or they are in obvious contradiction with other evidence relating to the same subject and also whether it lends itself to such a method of verification. Certain activities will be reproduced at the crime scene with the possibility to view them as they were given in the statement.

They will be able to check whether the defendant could perform certain activities alone (e.g. transportation of bulky goods in short a time over a distance, opening a safe without matching keys, escalating a protection network, etc.), the ability of a witness to perceive noises from a distance and other aspects.

The decision to participate in the reconstruction will be preceded by an analysis of the advantages and usefulness of this activity, providing the necessary technical-material instruments, any social and personal problems it might create, and the progress it can bring to the case.

Restoration of certain activities could pose a threat to life and health of those involved or harm the dignity of others, create difficulties at the crime scene, for example blocking the rail traffic, work in a factory, road traffic etc.

The reconstruction would be extremely expensive without offering too many and significant new pieces of data or without sufficiently contributing to solving the case, and it could also negatively affect public opinion. If this preliminary analysis leads to the necessity of the crime scene reconstruction, a team will be set up, and the persons to be present (the defendant and his lawyer, various experts, the victim, witnesses, etc.). This will set the technical equipment necessary to carry out the reconstruction, and the technical equipment for the collection of evidence, means of transportation to the crime scene, etc. They will check time and lighting conditions from when the event took place: night, fog, natural light, daylight, etc.

Certain activities can be reconstructed without going to the headquarters of the judicial body, such as opening a safe, car, lifting a parcel, hitting a person, etc.

Visibility or audibility verification activities will necessarily be performed at the crime scene or in conditions as close to the situation and the time of the offense as possible. If the differences in terms of weather (storm, rain) are not essential for the success of the reconstruction other conditions can be chosen. If they verify negative allegations like denial of commission or perceiving certain actions, verification will be performed with the help of other people with similar physical characteristics of age, sex, height, etc.

Regarding the instrument used, it is recommended that when there is a harmful tool, it should be replaced with an imitation, such as a carton axe to reproduce hitting the victim or if for example it is a common tool like a screwdriver, hammer etc, the real tool or a similar one may be used.

In investigating the possibility of hearing certain sounds, words, under certain conditions, the initial conditions such as operation of equipment, distance, background noise, silence etc., will be reproduced.

The reconstruction will be performed under the leadership of the investigator, ensuring the presence of those whose statements will be checked, persons involved in the activity: the perpetrator, victim, experts etc. The victim will be replaced with another person of the same physique, if there is concern that participation might produce powerful emotions generated by re-living the events. After reaching the crime scene, they will evaluate the overall conditions, security, restricted access to strangers, and the presence of witnesses. If complex circumstances will be reconstructed or there will be several versions of the scene to be reconstructed, especially less experienced investigators are recommended to draw up a plan. For the performance of each sequence, the conditions for resuming the artificial process will be provided, performing as many replays as necessary. People will be placed according to statements. When there are several presumptive variants regarding positions and distances, all these variants will be reconstructed separately. If there are multiple perpetrators, accomplices, etc. participating together to the reconstruction, it is recommended to leave them relative freedom of movement. Suspects or defendants arrested or detained shall not be handcuffed together, thus avoiding passive attitudes or flawed results.

When reconstructing an aggravated murder, the accomplice was left handcuffed with the perpetrator, and in court he used that fact to argue that he only had a passive attitude when performing the crime scene reconstruction different from real circumstances, where he could not intervene to save the victim.

The offender in custody shall not be held handcuffed during the crime scene reconstruction by the escorts and guards, because in this case he could afterwards object that he could not act differently and unhindered, being able to hide movements or actions committed.

The results of the reconstruction are recorded in the minutes, being also photographed, a detailed development being recommended. It will describe the methods used, technical means, deployment mode, people participating, actions executed and by whom, if the sequence was repeated and how many times. Any discussion regarding each reproduction, observations of the participants, the assignation of the reconstruction (photo, video, sketches) will also be recorded.

Photos are attached to the minutes in the case file. It will also state the starting date and time, as well as the closing date and time of the reconstruction, the document being signed on each page by all participants.

The reconstruction can be in the form of recognition of objects and persons, which aims to establish the identity of an object, person, animal, the usual method being based on direct examination of the identifiable subject.

The presentation will be preceded by a detailed hearing of the person who will make the identification. He will be required to make a statement about the circumstances in which he saw the object to identify and indicate the details, and characteristics that make the ground for identification.

In such situations a group of at least three people will be formed. If it is about identification of persons, they will be selected, along with the person to be identified, persons of the same sex, stature and age as close as possible, avoiding striking differences in height or clothing. If at the place where the person was seen performing certain activities, they will be asked to perform the same moves, for example, hitting, crawling, and lifting.

As a rule, the presentation for recognition is performed in group, but the investigators can also successively present the people in the group, asking the person making the identification to indicate the number of the recognized person, the procedure being used when the one to be recognized was seen moving.

No suggestions or edifying gestures will be made; the one to be identified will not be presented in prison clothes or handcuffed. If the answer of the person making the identification is positive, photos of the recognition group will be taken, then the person who identifies will be photographed showing the object or person recognized. Video recordings are particularly useful in addition to photos, as some angles may cause misleading effects.

When the person says he cannot acknowledge any person or object, they will consider both the possibility of a fear or reluctance to identify for fear of possible reprisals, and the possibility that, indeed the sought person is not in that group.

Photos are attached to the case file compiling a minutes which records the results and the development of the procedure, which is also attached to the file.

In order to recognize corpses, the presentation is only individual and only after the corpse was laid out, that is washing the blood, stitching wounds, etc. In this case, the presentation for recognition will be preceded by a thorough hearing when details about physical defects, distinctive marks, tattoos, scars, etc. will be asked. When presenting the corpse, they will ask again for these details.

The rules remain valid and necessary (group of at least three, prior hearing, avoiding suggestions, taking pictures, video recording) in the case of recognizing objects. The focus will be on certain specific details or defects, traces of repairs, wear, colour, etc. If possible, lighting conditions similar to those when the object was seen will be created, and the minutes will state the recording method: photo, video as working conditions, natural lighting, artificial lighting, etc., type of film or memory card used, duration of activity, starting and ending time, etc.

Video recordings have the advantage that the activities can be resubmitted in full to the panel of judges.

3. CONCLUSIONS

The importance and role of the crime scene reconstruction in the criminal investigation of different types of offences can be highlighted only as a fair representation of its purpose, implicitly of its evidence value.

Until performing the crime scene reconstruction, suppositions or assumptions have become certainties by checking and removing them, the working version being the one confirmed by all evidence presented in the case. It is true that the reconstruction constitutes a good opportunity to verify and confirm the reasoning used by the criminal investigation body in the initial phase of the investigation, but in no case can it be regarded as having the aim to verify the versions.

This means that the criminal investigation body has to consider that it requires accurate data or verification on circumstances of the case. In other words, to declare that the data and the circumstances were not cleared by other evidence, in which case the reconstruction is futile.

In fact, criminal investigation bodies resort to these evidence proceedings only in complex cases, by the ways of operation used and by criminal participation, as well as by the consequences resulting from the crime.

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