

CONCEALMENT OF CASES OF MURDER AS TRAFFIC ACCIDENTS. A CASE STUDY (centred, bold, font size: 14, font: Times New Roman)

E. A. Nechita, A. Tătăran (centred, bold, font size 12)

Elena-Ana Nechita (align text right, bold, font size: 12, font: Times New Roman)

Faculty of Law and Economics, the Law Department

Agora University, Oradea, Romania

*Correspondence: Elena-Ana Nechita, Agora University, 8 Piața Tineretului St., Oradea, Romania

E-mail: anaelena2009@yahoo.com / departament.stiintesociale@univagora.ro

Anca Tătăran (align text right, bold, font size: 12, font: Times New Roman)

Faculty of Law and Economics, the Law Department

Agora University, Oradea, Romania

*Correspondence: Anca Tătăran, Agora University, 8 Piața Tineretului St., Oradea, Romania

E-mail: anca.tataran@yahoo.com

Abstract (align text justify, bold, font size: 12, font: Times New Roman)

There are mentions in forensic practice of the possibility, even if rare, of concealing murder as a traffic accident.

The motivations of persons involved in such acts are related to: an attempt to circumvent criminal liability, the belief that, in case of a traffic accident, the crime is less serious and therefore the penalty is lighter or the offender's idea that the act will not be investigated or that there will be a superficial assessment of it as not meeting, under certain circumstances, the conditions required by law to consider it an offence.

In the first part of the article we present a brief analysis in terms of criminal law of the offences of simple murder and manslaughter, and in the second part we present some considerations on a case study of concealment of murder as a traffic accident.

Keywords (bold, font size: 12, font: Times New Roman): *murder, traffic accident, study, case, concealment.*

Introduction (align text justify, bold, font size: 12, font: Times New Roman)

National and international analyses demonstrate that traffic accidents are not random, unpredictable or unavoidable, only their occurrence at a given time is.

The factors contributing to the occurrence of a traffic accident may be grouped into internal factors and external factors. From the analysis of internal factors, it can be said that most traffic accidents are due to the fault of drivers (high speed of movement, irregular overtaking, not giving priority, driving under the influence of alcohol, illness, driving while tired, incorrect assessment of situations arising in traffic, etc.).

The category of external factors for traffic accidents includes specific structural and arrangement features of communication lines¹.

In forensic practice, there are cases where the active subject of the murder offence disguises murder as a traffic accident. Sometimes, in order to simulate/disguise an act as another act and sometimes as produced by another person, they create at the scene traces that are typically formed when committing a crime, in the same place and time. Other times, they remove the material object of the offence from the original place of committing the offence, transporting it to another location.

Despite the effort, attention and reasoning of the active subject of the murder offence, they fail to create the overall appearance of the scene and the details that are typically formed. Thus, a discrepancy becomes apparent between the different categories of traces, which highlights the artificial intervention of individuals in that area.

Such situations are referred to in the speciality literature as “controversial circumstances”² or “negative circumstances”³ and they are determined by the disparity between the facts and the event alleged to have taken place, the absence of traces or objects which normally should have been found at the scene.

The interpretation of negative circumstances will help establish the constituent elements of an offence or another, especially in terms of its objective and subjective sides. It will also play an important role in the judicial individualization of punishment for the concrete application of punishment.

The court, knowing the concrete offence, the offender's personality, his contribution to the committing of the offence and the circumstances in which it was committed, can evaluate its concrete, real risk. Therefore, it will find that there is a certain responsibility, depending on which it will establish and implement a penalty of a certain species, duration/amount, accordingly⁴.

I. In this respect, we refer to the Criminal Code of Romania. The Special Part, Title II, entitled “Crimes against the Person”, Chapter I, entitled “Crimes against Life, Limb and Health”, Section I, entitled “Homicide”, in which the legislature qualifies within different categories the acts affecting the person, by taking into account their gravity. Thus, Art. 174 provide the offence of simple murder, with the following legal content: “the killing of a person shall be punished by imprisonment from 10 to 20 years and denial of certain rights”, Art. 178 deals with the offence of manslaughter, having the following legal content: “the involuntary killing of a person is punishable by imprisonment for 1 to 5 years”. In practice, the possibility of *suicide in traffic* can occur, too.

A short analysis of the two offences in the light of criminal law will highlight the following:

A). The offence of murder has the following constituents:

Legal content. According to Art. 174 Romanian Criminal Code, “the killing of a person” constitutes the offence of murder.

¹ C. Aonițoie, V. Bercheșan, I. Dumitrașcu, *Tratat de metodică criminalistică*, Volume I, Carpați Publishing House, 1994, p. 112.

² I. Mircea, *Criminalistica*, Lumina Lex Publishing House, second edition, Bucharest 2001, p. 238.

³ E. Stancu, *Tratat de criminalistică*, fourth edition, Universul Juridic Publishing House, 2007, p. 335.

⁴ In this regard, see Laura-Roxana Popoviciu, *Drept Penal. Partea generală*, PRO Universitaria Publishing House, 2011, p. 301.

Structure of the offence. The special legal object is represented by the social relationships involving the fundamental human right to life.

The material object of this offence is the body of the living person towards whom the action is directed.

The active subject is not qualified, as it can be any person.

The passive subject is the body of the living victim. In judicial practice, many situations are encountered where there are more passive subjects of the offence. It does not matter if the victim wished their own death, if it was healthy or not, if it had a long or little time to live⁵.

Participation is possible in all forms.

The constitutive content. The objective side. The material element of the objective side can be achieved either by:

- an action of killing, or by
- inaction, in which case the offender was obliged to act in order to prevent a death, but did not act.

The subjective side involves the perpetrator's guilt in the form of intent, which may be direct or indirect.

For the existence of the offence, the motive or purpose of committing the crime has no relevance.

The immediate consequence is the death of the victim.

The punishment. The offence of murder shall be punished by imprisonment from 10 to 20 years and denial of certain rights. Attempt shall be punished.

B) The offence of manslaughter

Legal content. Art. 178 of the Romanian Criminal Code provides the offence of manslaughter as "the involuntary killing of a person", in par. 1 – the simple form, and the aggravated forms: "involuntary manslaughter as a result of failure to comply with the legal provisions or precautions to take while exercising a profession or trade, or in order to perform a particular activity", in par. 2; "when the involuntary manslaughter is committed by a mechanical drive vehicle driver with a blood alcohol level exceeding the legal limit or who is inebriated", in par. 3; "the negligent act committed by any other person in the exercise of their profession or trade and who is inebriated", in par. 4; "if the offence committed led to the deaths of two or more persons", in par. 5.

Structure of the offence. The legal object is represented by the social relationships involving the fundamental human right to life.

The material object of this offence is the body of the living person towards whom the action is directed.

The active subject is not qualified, as it can be any person, according to Art. 178 par. 1. According to par. 2-4, the active subject is qualified, as it may be only a person exercising a certain profession or trade or performing a certain activity or is a mechanical traction vehicle driver.

The passive subject is the body of the living victim. We note that sometimes the same person may be, concurrently, the active and passive subject of the offence of manslaughter.

The content of the offence. The objective side. The material element can be achieved either by an action or inaction.

⁵ See Gh. Nistoreanu, V. Dobrinoiu, I. Molnar, I. Pascu, Alex. Boroii, V. Lazăr, *Drept penal. Partea specială*, Continent XXI Publishing House, Bucharest, 1995, p. 95.

The subjective side. The form of guilt is negligence, in its two forms, that is: gross negligence and simple negligence.

The immediate consequence is the death of a person.

The causal relationship between the killing and the result must be present in all cases. It is irrelevant whether or not, besides the activity with the offender, other physical forces or mistakes of others have concurred to produce the result⁶.

The punishment. The offence of manslaughter in its simple form is punishable, according to Art. 178 Romanian Criminal Code, by imprisonment: from 1 to 5 years – par. 2, from 5 to 15 years – par. 3 and par. 4. The aggravating element referred to in par. 5 concerns both the simple and aggravated forms. As a result, for each form there is a possibility of a more severe punishment, increasing the penalty by up to 3 years.

The large number of victims⁷ of road events, the underlying causes and mechanisms generating lesions, on the increase in recent years, sustain the necessity for specialists to constantly have, besides a good training in the field (including familiarity with the technical features of cars, in a continuous process of modernization) an active attitude towards public awareness on the consequences of traffic accidents.

The main tasks of the research at the scene of traffic accidents are:

- to establish the circumstances of place, time and manner in which the accident occurred;
- to find, preserve and collect the traces formed at the occurrence of the accident⁸.

The scene of the accident is examined in a *static* and a *dynamic* phase, and in order to preserve it as a whole and to determine the ratio between the main objects of the scene and the details, orientation photos and sketches of the main objects and of details are made⁹.

In the practice of traffic accident investigation, traces are studied in all their aspects, from the way they are formed, to their appearance, the methods and technical means of searching, preserving and collecting them from the scene, their examination in laboratory conditions and the forensic expert's conclusions¹⁰.

Reproduction traces are created through the direct contact of two objects, by imprinting in the negative some of the characteristics from the contact side of one of the objects on the surface or in the volume of the other object¹¹.

In the case of traffic accidents, in addition to reproduction traces, other categories of traces are found, such as: biological traces, traces of objects/remains of objects, of substances and sometimes traces resulted from fire or explosions due to the traffic accident. Specifically, the traces of feet, hands, wheels with tyres or wheels of animal traction vehicles, may be subclassified as follows:

- depending on the mode of action of the recipient object as opposed to the object generating the traces, into static and dynamic traces;
- depending on the plasticity of the recipient object, into superficial traces and deep traces.

⁶ G. Antoniu, *Codul penal comentat și adnotat. Partea specială*. Vol I, op. cit., p. 107.

⁷ With reference to direct and secondary victims, as well as collateral victims.

⁸ E. Stancu, *Tratat de criminalistică*, Universul Juridic Publishing House, Third edition revised and enlarged, Bucharest, 2004, p. 617.

⁹ Bercheșan, V., *Valorificarea științifică a urmelor infracțiunii.*, Little Star Publishing House, Bucharest, 2002, pp. 166-184.

¹⁰ I. Mircea, *Criminalistica*, Lumina Lex Publishing House, second edition, Bucharest, 2001, p. 3.

¹¹ I. Mircea, op. cit., p. 61.

The traces generated by vehicle tyres have characteristic features depending on the vehicle type. Also, the individual characteristics of the tyres are important, such as partial or total wear of the tyre antiskid device pattern, lateral tyre wear, holes, cuts or marks from pebbles imprinted in the tyre antiskid pattern.

In determining the type and model of the means of transportation used, the following elements are also taken into account: track width, wheelbase, tread width, number of traces, the direction of traces of dragging or sliding, shards of glass and the location of various traces of objects and remains of objects.

Usually, the purpose of the traffic accident investigation is to determine how the traffic accident occurred, the date of lesion onset, their severity and whether they were vital or not, mode of death and cause of death (if there are dead victims).

By comparing categories of traces with each other and taking into account the specifics of the accident site, logical explanations can be provided for the existence of certain categories of traces, along with traces resulted from other sources, and for the absence of other traces that are usually generated at the scene of the accident, in similar cases.

By interpreting reproduction traces, explanations are provided on the nature of the trace-generating objects, the manner and conditions of formation of the traces in question, the relationship between them and the changes they might have undergone after the committing of the offence.

II. A good example, in the context of the theme of the proposed article, is the case occurred in the area of county XXX, where, on xx/2005, the body of a male was found by the side of the National Road DNxx, in the locality A, parallelly to the road, at a distance of 3.20 m. As a result of the forensic identification, it was determined that he was age 78 and lived nearby with his son-in-law.

During the investigation at the scene, it was found, in the static phase examination, that he had lesions on his face and body and there were articles of clothing scattered on the road verge.

After collecting data from the persons interrogated, two versions were developed as to the production of lesions:

- vehicle accident with leaving the scene, and
- violent death caused by repeated falls or blows.

No traces of blood were found at the scene, which are present in most cases of a traffic accident. They can be deposited anywhere, from the spot of the initial contact between the victim and the vehicle to the place where the victim is.

The crime scene was then investigated in a *dynamic* phase, the body was examined and it was found that it did not present lesions specific to a traffic accident (fractures caused by pulling or clinging, torn buttons, crumpled clothes, traces of friction and dragging, tyre impressions, lesions produced by the lower metal auto parts, etc.)¹².

Additional traces were identified, namely a bruise located in the right eyebrow area and a trace of sinking-in of the occipital skull cap.

During the external examination of the corpse, it was found that it presented purple, livid spots, located on the dorsal parts of the hypostatic body and cadaverous stiffness of all joints.

After the necropsy on the body, it was found that the victim had injuries caused by repeated blows, numerous rib fractures and a strong internal bleeding.

¹² Vl. Beliș, *Tratat de medicină legală*, Volume 1, Medical Publishing House, Bucharest, 1995, pp. 400-416.

The discrepancies between the scarce data recorded on the spot, by examining a wide area, including the section of road and the land adjacent to the place where the body was found, and the pieces of information provided by the forensic examination led to the suspicion of another mechanism causing the victim's death and the involvement of the road accident only as a disguise.

The conclusion of the necropsy as to the cause of death was that it "was due to acute cardiorespiratory failure, with lung, myocardium and aortic artery contusion and rupture, consecutive to a chest trauma with multiple rib fractures"¹³.

The existing data were supplemented by information stating the previous situation of the deceased, including a possible conflictual relationship with S. L., who was the victim's caregiver.

The violent nature of the latter's behaviour had previously led to quarrels, some with the victim being under the influence of alcohol. S. L.'s criminal record included forest offences that he admitted to.

The researches were continued at the victim's domicile, where a patch of reddish brown blood-like substance was found, as well as a deposit of reddish brown-coloured matter between the floor boards. Also, traces of this kind were discovered on the articles of clothing of the said S. L.

Following the completion of the DNA test, the genetic profile of the traces of blood found on the floor of the room inhabited by the victim and on the shoe of the said S.L., as identical with that of the blood samples collected from the victim.

The violent nature (admitted by the suspect) of the relations between the two in the evening prior to the death of the victim had led to injuries that were confirmed by the conclusions of the necroptic examination. It was also stated that "the lesions found [n/a, autopsy report] occurred most likely by hitting with a hard body (fist, foot), fall and compression between two hard plans (hard body such as a leg, knee and the ground)". After the death of the victim, the body was transported to where it was found, to simulate a road accident.

Simulation (concealment) can be retained¹⁴ as a possible means to obtain benefits, in the case of psychopaths (individuals with personality disorders).

Conclusions (align text justify, bold, font size: 12, font: Times New Roman)

1. In the absence of traces of blood in the case of traffic accidents (in combination with other characteristic elements), especially when external lesions are present on the victim's body, of a nature nonspecific to traffic events, investigators should consider the possibility of a murder concealment, subsequently supported or invalidated by the identified elements.

2. By comparing categories of traces with each other and taking into account the specifics of the accident site, logical explanations can be provided for the existence of certain categories of traces, along with traces resulted from other sources, and for the absence of other traces that are usually generated at the scene of the accident, in similar cases.

3. By interpreting reproduction traces, explanations are provided on the nature of the trace-generating objects, the manner and conditions of formation of the traces in question, the relationship between them and the changes they might have undergone after the committing of the offence.

¹³ From the coroner's report, Department of Forensic Medicine of Bihor County.

¹⁴ Goldberg, R., *A Guide to Clinical Psychiatry*, All Publishing House, Bucharest, pp. 258, 289.

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