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TACTICAL TASKS OF INVESTIGATIVE EXPERIMENT IN THE INVESTIGATION OF GRIEVOUS BODILY HARM CAUSING VICTIM'S DEATH

Лускатова Т.О., Лускатов О.В. Тактичні завдання слідчого експерименту при розслідуванні умисних тяжких тілесних ушкоджень, що спричинили смерть потерпілого. Досліджено тактичні завдання слідчого експерименту при розслідуванні умисних тяжких тілесних ушкоджень, що спричинили смерть потерпілого. Проаналізовано наявні у юридичній літературі точки зору з цього питання. Запропоновано низку питань, на вирішення яких може бути спрямований слідчий експеримент з метою з'ясування механізму учинення злочину в цілому чи в ході окремих його стадій.

Ключові слова: *слідчий експеримент, тактичні завдання, тілесні ушкодження, дослідження, злочин.*

Statement of the problem. Investigation experiment in the investigation of intentional grievous bodily harms causing victim's death, alongside with reviews, interviews and expert opinions most often provides significant criminalistic information to the law enforcement. Accordingly determine tactical tasks of the first of these proceedings is a prerequisite for targeted and effective investigator in the criminal proceedings on the specified type of acts.

Analysis of publications which discuss the solution to this problem. Many scientists such as A.R. Belkin, V. H. Drozd, V.A. Konovalova, O.R. Ratynov, S.O. Safronov, K.O. Chaplynskyi, O.K. Chernetskyi, V.Yu. Shepitko, etc. have considered the characteristics of investigative experiment tactics in their studies. However, not enough attention has been paid to characteristics of investigative experiment tactics in the investigation of intentional grievous bodily harms causing victim's death. At the same time this question has certain specifications and requires more thorough research, which determines timeliness of this article's topic.

The **purpose** of this paper is studying the tactical tasks of investigative experiment in the investigation of intentional grievous bodily harm that caused victim's death.

Basic content. Describing the concept of experiment in general, V.A. Konovalov and V.Yu. Shepitko mention that it has a wide range of cognitive properties, flexibility, variability and ability to detect something new that goes beyond the frames of hypothesis, which is verified and its consequences [7, p. 244]. A.R. Belkin stresses that the experiment is more effective method of studying than observation, without which is also an inalienable part of investigative actions. Having been developed on the basis of observation, experiment includes intervention into the event observed and its active transformation and changing of its course and the conditions under which it occurs [4, p. 370]. According to K.O. Chaplynskyi, investigative experiment is a strong psychological means of impact on its participants, as the results achieved can confirm the presence or absence of a particular phenomenon or event, and it is quite difficult for a suspected person to dispose of them [12, p. 148].

By means of the above mentioned proceedings, verifying and clarifying the testimony of witnesses, victims and suspects and various data obtained during the inspection of the sites and during other investigative (detective) actions are implemented. Due to the investigative experiments, it is possible to verify the ability to perceive certain objects and events and carry implement certain actions in certain circumstances (see, hear, recognize), and also verify the possibility of a certain actions' result occurrence or technical state and interaction of mechanisms of any aggregate [2, p. 123-124]. During the interrogation, investigator receives evidence only from people's reports, and during the inspection, search and certification, the investigator sees things, tracks etc. During the investigative experiment, the actual data are represented by the immediately perceived possibility or impossibility of acting in a certain manner and the consequences of these actions, which are described by the interrogated persons [11, p. 138]. The process of investigation of intentional grievous bodily harms causing victim's death may require solving a number of different tasks requiring experimental verification.

In general, the investigative experiment tasks include the following: verifying and clarification of evidence obtained from the results of certain investigatory actions; establishment of the exact mechanism of crime commitment; verifying the versions; detection (removal) of contradictions in the testimony of suspects, witnesses, victims, etc; determination of the boundaries of awareness or ignorance of the perpetrators; receiving new legal fact, etc. [8, p. 301].

V.H. Drozd mentions that the verification of testimony in the cases of bodily harms allows precise, detail and specify the place, time, method and other circumstances of the incidents and specify the compliance of this information to that obtained from other sources available to the investigator. This verification allows to: get assured of the compliance of a person's report to the actual situation at the crime scene; define the means used by a criminal to arrive to the crime scene and to leave it; find out the new evidence (objects concerning which it was informed by the criminal) and new crime traces or possessions; define witnesses, victims and suspects unknown to the investigator; find out real situation at the

crime scene; obtain data on a person's awareness of the place and circumstances of the crime in which this person participated or witnessed [5, p. 169].

The study of sentences and archival materials of criminal cases showed that during the investigation of intentional grievous bodily harms causing victim's death, investigative experiments (reconstructions of the situation and circumstances of the crime events) usually carried out in order to determine the following: localization of the crime scene within a specific area; the relative situation of direct participants and other persons present at the scene; manner and circumstances of the act commitment; the nature and mechanism of causing bodily harm by the perpetrator.

For example, according to the sentence of Tyachivskiy district court in Zakarpattia region, on January 22, 2013, about 9:00 PM, citizen B., being in his own home situated at the address: Peremohy str., Dulovo village and being under the influence of alcohol, saw his friend D. on the windowsill of the hall, who tried to get into the house get through the window. B. told D. that it is necessary to enter his house through the door, stabbed D's left leg with a kitchen-knife causing him a grievous bodily harm. Having received this harm, the victim D. jumped out of the window and ran away from the yard, but then he fell and died due to essential blood loss. During the investigatory experiment, B. demonstrated the place and means of the crime commitment and D's situation in relation to him at the moment of causing the harm and the mechanism and location of stabbing [3].

As S.O. Safronov mentions, during the investigation of crimes concerning bodily harms, task of defining means by which the crimes were committed is faced by the investigators. Sometimes this task can be accomplished only by means of the investigatory experiment. In addition, it is necessary to identify the possibility or impossibility of causing an injury caused to the victim in a particular scene and the weapon, manipulation and method, which mentioned in the testimony. For example, by means of investigative experiment, it can be determined whether a person being pressed against the wall would be able to make an arm swing of the big amplitude; or there is a possibility to determine the dynamics of the fall of the body using a mannequin as the example. In conducting the proceedings one should take into account the admissibility and validity of the methods of experimental research. Thus, to determine the trajectory of the fall of man from a height, a mannequin should be used with the physical characteristics most similar to the body of the fallen person (weight, length, while the center of gravity in the mannequin should be located in the same center of gravity of the body in the falling position) [10, p. 154].

The study of archival materials of criminal cases showed that investigative experiments (reconstructions of the crime events) are usually (64%) carried out with the participation of the suspect, in some cases – in the presence of forensic expert, particularly in establishing a method of taking offense and the mechanism of causing bodily harms by the guilty person.

Investigatory experiment is one of those kinds of investigative (detective) actions, which is mostly often to be held not at the beginning of the investigation,

but only after it lasted for some time, and the law enforcement officers have a significant amount of information at their disposal, that in generally allows to make a picture of investigation of crime but it still lacks some details. Thereby, O.K. Chernetskyy states that the initial information on the circumstances is at the disposal of an investigator before the investigative experiment to be held, this information includes: the testimony of interrogated person to be further checked, the information regarding the inspection of the scene, forensic examination conclusions, the testimony of other participants, etc. [14, p. 232]. Therefore, it is possible to conduct a thorough preparation for the implementation of these complex legal proceedings that is one of the main conditions for the implementation of the tasks to clarify, refine and confirm the specific circumstances of the incident under investigator's attempts to clarify by means of the investigative experiment. During such training, the reconstruction of the situation in a certain place of its conducting is carried out; the items to be gathered (their analogs or models) that have been directly used by the persons involved in the criminal events; the necessary number of participants is involved etc. During the preparation of such events the investigator should consider the general conditions of the tactical investigative experiment to predict the possibility of direct compliance with his performance.

According to K.O. Chaplynskyi, the general conditions are as follows: 1) conducting investigative experiments in conditions close to those, in which the event, fact or phenomenon has taken place; 2) to use the same experiment equipment, machinery, devices and materials that have been used during the criminal event, and if not possible – to use their analogues or the field layouts; 3) repeated and gradual experimentation and repetition of test actions in changing circumstances; 4) a limited number of participants and experimental research actions most similar to those that occurred in reality (in sequence method, character, tempo, etc.); 5) involvement of a witness, victim or suspect prior to the experiment; 6) conducting separately such proceedings for each suspect [13, p. 145-150].

Under the provisions of article 240 of the Civil Procedural Code of Ukraine the investigative experiment can be conducted not only by experiments or trials, but also by means of play actions, conditions, circumstances of the specific event. Thus, Yu. P. Alenin indicates the following main objectives of these procedural steps: specification of the previously established evidence, the detection of a new evidence, clarification and elimination of the contradictions in the testimony, exposing false testimony. In addition, scientist determine the objectives having psychological nature: 1) search for material evidence or trace of events; 2) determining the elements of environment space, the presence of which can affect the course of events, making it fit, possible or not; 3) clarifying the awareness of persons testimony being under the audit, regarding the details of the material conditions, etc. 4) comparing the details of criminal events listed by the different participants of the event [1, p. 179-180].

Considering the progress of the said action, L.Ye. Kalyuzhna notes that it is

advisable to carry out the verification of evidence in cases of physical damage in the following order: first, the person shows the place where the bodily harm took place, and the objects that are situated there and related to the events; further, he/she explains the mechanism and features of bodily injury to the victim; the next step is to demonstrate the act committed in relation to the victim (including acts using weapons or other items); at the last stage the investigator compares the findings with the situation on the spot and the information contained in the file [6, p. 109]. In such cases, the significant terms of the investigative experiment are those to provide the full initiative to the person whose testimony is under consideration; excluding any influence on the person, whose testimony is under consideration, this includes: guidelines, advice or tips on route, finding the place of the crime or its concealment, circumstance, situation venue of the proceedings and the location of it traces, objects, documents, mechanism and action, and the sequences of the participant's actions.

According to Ye.R. Ratinov, the results of the investigative experiment to become more evidential in case of the most complete reproduction of all the factors that can influence them, because the opportunity to perceive a fact in real and staged situations are not always identical, in fact, not everything depends on the objective conditions and the very significant effect can make a difference in the mental state of the person at the time of the events and the time of the performance of research activities.

In view of the above, the scientist distinguishes three components in the structure of the investigating experiment: modeling the objective factors, modeling the subjective factors and modeling and simulation of research actions, events or phenomena [9, p. 324-325]. Certainly, these processes should be considered by an investigator in the preparation for test actions.

When exploring the features of investigation of the intentional infliction of severe and moderate physical damage, S.O. Safronov found it necessary and recommend to determine the following regarding the reproduction of action with the purpose to check the testimony: 1) the feasibility of raising questions about the purpose and desired outcome of committing criminal acts; 2) asking questions about why and what is the purpose to chose such a character of actions (if during the reproduction of the events of the crime there will be a set of another possibilities or the alternative behavior); 3) the need for raising questions about a person to realizes the danger of his/her actions; his/her prediction of occurrence of dangerous consequences, the desire or conscious assumption of occurrence of these consequences; motive and pretext that prompted a person to commit criminal acts; 4) issues aimed to explain the inconsistencies of character actions being shown, named with the purpose of these actions specified (only in case of such fact) [10, p. 156]. In our opinion, it should be added that during the formulation of questions and in general during the investigative experiment, the police officer should pay attention to non-verbal information that comes from the participant of this (investigation) action. For example, such information is able to tell how he/she is focused on the scene. His/her physiological (cardiovascular, respiratory, secretory)

reactions will obviously indicate it in case of direct perception of the situation and recall of some details of the event, perhaps even considering a place of concealment of weapons or leaving other traces of the crime, as well as the person to try the investigator lead astray.

Conclusion. Summing up, it should be noted that the investigative experiment to determine the mechanism of commission of crime in general or during specific stages can be aimed at addressing a number of issues, including the establishment of: 1) a particular place or defining the boundaries of the site where the victim has suffered a physical damage (to assess the capability of the terrain, placement of furniture or other objects in the room to influence the offender, etc.); 2) the relative position and poses of the suspect and the victim when causing bodily ushkod, their movements, in particular the suspect, in order to catch the victim and the latest efforts to avoid attacks or in carrying out resistance; 3) a method to cause bodily harm, namely by means of weapon usage or avoiding to use it; the nature of holding weapons, including one or both hands; the trajectories of causing damage; usage of weapons remotely (fire, throwing weapons, etc.) or by direct contact and others; 4) the possibility to cause harm by means of the the certain postures specified by the person and the relative position of the suspect and the victim; the conformity of the physical damage and marks on the body and clothing of the victim; on the body and clothing of the suspect under the conditions of the victim's to maintain resistance; on the elements of the venue; 5) the possibility of leaving the victim in certain circumstances (in terms of high or low temperatures, etc.) that can cause physical damage; 6) the possibility to cause physical damage by himself/herself.

An investigatory experiment to determine whether the victim orientates at the place of commission of a crime, can be carried out with the suspect, who had never been acquainted with persons on the territory of which e/she happened to be and caused bodily harm to the victim; or when the event has been held at the draw area (open area). In such case, the following things should be investigated: 1) the route of the guilty person to the point of taking offense; 2) the place of ambush arrangement (if it was carried out in an open area); 3) location of premises (rooms) inside the house or apartment, the procedure of movement directly on the site and the relative position with respect to the victims and other participants (if they were present); 4) the way to cause bodily harm to the victim, the list of the further actions in relation to the victim (if they have occurred); 5) the place where the weapon has been found (if it has happened accidentally) and getting rid of it (if it has been thrown or concealed); 6) the route of the scene; 7) a meeting place with some familiar persons (if such a meeting has taken place immediately or shortly after the event) and others.

The further study of the problem can be recommend to further development of the tactics to carry out investigative experiments in the investigation proceeding of the studied type of crime.

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Лускатова Т.А., Лускатов А.В. Тактические задачи следственного эксперимента при расследовании умышленных тяжких телесных повреждений, повлекшие смерть потерпевшего. Исследованы тактические задания следственного эксперимента при расследовании умышленных тяжких телесных повреждений, которые повлекли смерть потерпевшего. Проанализированы имеющиеся в юридической литературе точки зрения по этому вопросу. Предложена совокупность вопросов, на решение которых может быть направлен следственный эксперимент с целью выяснения механизма совершения преступления в целом или в ходе отдельных его стадий.

Ключевые слова: следственный эксперимент, тактические задания, телесные повреждения, исследования, преступление.

Luskatova T.O., Luskatov O.V. Tactical tasks of investigative experiment in the investigation of intentional grievous bodily harm that caused victim's death. The article examines tactical tasks of investigative experiment in the investigation of intentional grievous bodily harm that caused victim's death. Analyzes available in terms of legal literature on the subject. A number of issues on which decision may be directed investigative experiment to determine the mechanism of commission of the offense as a whole or in the course of its separate stages.

The investigative experiment to determine the mechanism of commission of crime in general or during specific stages can be aimed at addressing a number of issues, including the establishment of: 1) a particular place or defining the boundaries of the site where the victim has suffered a physical damage (to assess the capability of the terrain, placement of furniture or other objects in the room to influence the offender, etc.); 2) the relative position and poses of the suspect and the victim when causing bodily ushkod, their movements, in particular the suspect, in order to catch the victim and the latest efforts to avoid attacks or in carrying out resistance; 3) a method to cause bodily harm, namely by means of weapon usage or avoiding to use it; the nature of holding weapons, including one or both hands; the trajectories of causing damage; usage of weapons remotely (fire, throwing weapons, etc.) or by direct contact and others; 4) the possibility to cause harm by means of the the certain postures specified by the person and the relative position of the suspect and the victim; the conformity of the physical damage and marks on the body and clothing of the victim; on the body and clothing of the suspect under the conditions of the victim's to maintain resistance; on the elements of the venue; 5) the possibility of leaving the victim in certain circumstances (in terms of high or low temperatures, etc.) that can cause physical damage; 6) the possibility to cause physical damage by himself/herself.

The further study of the problem the author recommends to further development of the tactics to carry out investigative experiments in the investigation proceeding of the studied type of crime.

Keywords: *investigative experiment, tactical job injuries, research, crime.*

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КРИМІНАЛЬНО-ПРАВОВА ХАРАКТЕРИСТИКА ПОСЯГАННЯ НА ЖИТТЯ ЖУРНАЛІСТА

Надано кримінально-правову характеристику посягання на життя журналіста. Розглянуто об'єкт, об'єктивну сторону, суб'єкт та суб'єктивну сторону злочину.

Ключові слова: *об'єкт злочину, об'єктивна сторона, суб'єкт, суб'єктивна сторона, журналіст, посягання, життя, законна професійна діяльність.*

Постановка проблеми. Відповідно до ст. 34 Конституції України, кожному гарантується право на свободу думки і слова, на вільне вираження своїх поглядів і переконань. Кожен має право вільно збирати, зберігати, викорис-