

Seminarul profesional
Interpretarea criminalistică și medico-legală a unor elemente materiale

THE RELEVANCY OF QUESTIONING ON THE SCENE IN CASE OF EXHIBITS

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Abstract: *If questioning on the scene is performed correctly, however it – recalls the memories of a person – seems to be a human data source, we need to lay down, it is more than that. In those cases, when we get unique informations, which are only known by the people who were there at the crime, and the previous inspections are reinforcing about it with material evidences, and it reflects on the spot, then it is a material reflection of a special personal evidence. In these case, we think, the material reflection of a special (unique) personal evidence produces a new, combined evidence.*

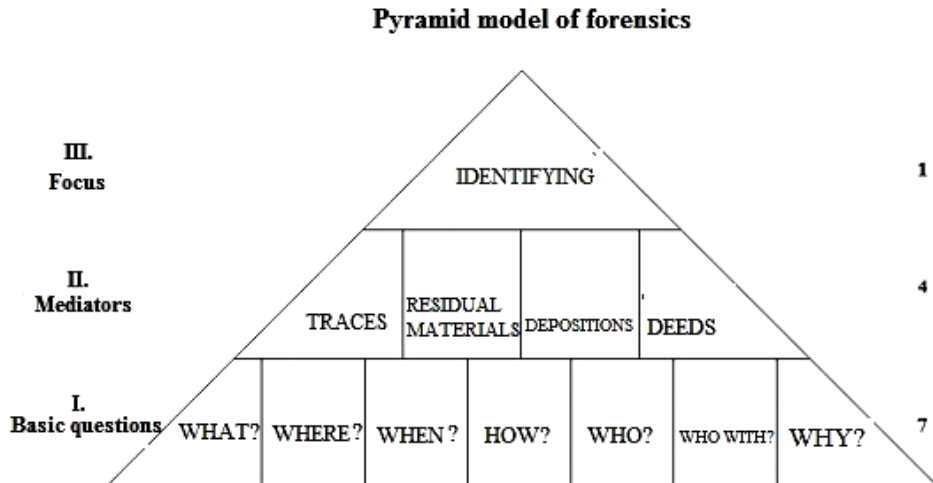
If our thread is correct, we think, we need to rethink categorizing questioning on the scene as a personal evidence. By the introducing it is clear to see, that this procedural act has a personal nature, but its role mutated by the material reflections, its effect is unquestionable.

Keywords: *pyramid model of forensics, questioning, procedural acts, analyzing skills, tactics, criminal proceedings.*

Introduction

In each era of history emerged the need to sanctionate to punish the ones who commit a crime. At the beginning this sanction was only about the person, then soon got the social values higher relevancy, and as a result of this long progress we have got to the present-day justice.

Nowadays we think that the most important element of these acts is the award, but actually the process of investigation contains the most pitfalls. We find many definitions for the investigation as the part of prosecution. Our opinion is that investigation is series of complex and creative acts conducted on the rules of method and forensic theories, but actually its purpose is to solve an issue, which is the identification. The pyramid model of forensics is perfect to exemplify its aim, and it shows the most relevant informations and methods.



The pyramid model of forensics.

Based on the pyramid model it is clear to see the aim of the proceedings, which is the identification itself. The usable instruments for identification – mediators – are the traces and residual materials, deeds and depositions. Maybe it is worth to mention as an interesting fact, that three of mediators belong to the material evidences, and only the deposition is the part of the personal proof. The foundation stone of these data is no other than the basic questions of forensics.

We know many ways to classify the data sources, in our treatise we would use the most current and known three-partitioning, accordingly the groups of data sources are:

- personal data sources (aggrieved, witness, culprit);
- material data sources (material evidences, deeds);
- and the transition between them: the expert report.

In general about questioning on the scene

The legal nature and forensic relevancy of questioning on the scene is one of the most contested issue of the forensic scientists – as we discussed about it before. Some of these scientists say that once some of them valued it as a version of proof-test, others considered it as an independent, sovereign procedural act. In foreign literature the authorities often call it reconstruction, payed particular attention of controlling the deposition on the spot and replaying the act. Now in our country it is easier to define this complex procedure, it owns the signs of more procedural act.

• Based on the rules of prosecution “the court, the prosecutor or the investigating authority debriefs the culprit and the witness on the spot, if it is still needful to show the

site of the crime, another site connected to it, material evidence or the runoff of the action, after the previous questionings”

(2) Before questioning on the scene the culprit and the witness shall be asked how they perceived the act or the material evidence, and how they could recognize it.

• According the forensic definition of János Lakatos „questioning on the scene is a forensic tactical method, whereby the anteriorly debriefed person can

• show sites, place of material evidences;

• reconstruct sites, situations;

• show actions expressively, while the person gives a debrief too

related to the examined act, to make the facts absolutely cognizable for getting the case explorable.”

• As the Article 36 of Investigative Order says: “Questioning on the scene may be tended to show paths, places, to control the culprit, aggrieved or witness's debrief, to get evidences, or to illustrate other elements of the occasion contained by the debrief.”

The forensic definition shows aright the prerequisite, conducting and aim of questioning on the scene. While the procedural law emphasizes the essence of method and the ones who are entitled to initiate it (questioning on the scene is a probative proceeding controlled by the court, prosecutor or the investigating authority, and its aim is to present the site of the crime or another place connected to it, material evidence or the action), the Investigative Order pays attention – compared with the quoted tactical wording - to the versions and the main aims.

The definition we discussed about above seems to suggest the same, but the different definitions pay attention on different conceptual elements. Lakatos' forensic opinion implies to the prerequisite of questioning on the scene (“anteriorly debriefed person”), it's aimed at what that is directed to (“shows sites, place of material evidences”), it mentions the reconstruction and the demonstrativity, and it also adumbrates its aim (“to make the facts absolutely cognizable for getting the case explorable”).

It does not mention – unlike the Investigative Order – the controlling of debriefs on the site of crime like an accidental intetion, but the word „reconstruction” includes it. However the Investigative Order does not contain the word „reconstruction”, which seems to characterize best debriefing on the spot for us. Lakatos' standpoint is rather criminal-tactical, that is why it is understandable that he does not mention the undertakers of questioning on the scene, but it will be replaced in the Act XIX of 1998 on Criminal Proceedings (“the court, the prosecutor or the investigating authority debriefs...”). Furthermore, the procedural law mentions that the debriefed person shall be revealed, “how they perceived the act or the material evidence, and how they could recognize it”. However, the illustrativity is not included.

We can see that the three definitions have a point in common: showing the sites and/or material evidences. Lakatos' wording encompasses the definitional elements of the procedural law and also the Investigative Order, so it seems to be the most optimal way to express the meaning of questioning on the scene.

Questioning on the scene is uniformly bound to human data sources – so to the human evidences - by the literature. It does it, because the subject (the person) of the procedure participates at this act only when she or he undertakes it, furthermore, in these incidents we get some kind of informations that only are known by the person that was on the site of the action, or who committed it. The activity of contributory of the procedure itself can be categorised at least to three parts,

- „if the human subject of questioning on the scene draws the attention of the investigating authority to sites, parts of sites, which are related to a crime, it happens by showing;

- when you should rebuild some kind of situation, it will be reconstructed, that means, the situation that happened earlier will be restored as it;

- to express illustrating, demonstrating an action on the timeline perfectly, we use 'illustrative presentation' to draw up."

Based on the categorising by the versions it is clear to see, that in each version the person is the one who orients them. Nevertheless, the thought bumps up, that the debriefed person who tells us about the crime based on his memories, after he presented the event, does he create a new data? Is this data – valued complex way – still a human data (maybe evidence later), or it could turn to a mutated, combined data source?

Mediators of the pyramid model of forensics

The frame of using forensic mediators is the process of argumentation itself, we think. Argumentation can be approached from different perspectives, from legal point Act XIX of 1998 on Criminal Proceedings names evidences, and evidential procedures. Furthermore, we can talk about forensic proof-theory, which discusses about laws of genesis and reflection of the evidences, the expedient ways and devices to get and use them, and let the law-applying authorities know them.

As we mentioned above, nowadays questioning on the scene appears as a part of human evidences in the regulation. This procedure can be connected to the depositions in case of mediators of forensics, but we think it cannot be clearly classifiable there. To present it more precisely, we see it expedient to compare questioning on the scene with those evidences and methods of proof, which have similar signs with it.

Delimitation of questioning on the scene from other procedural acts

- Delimitation of questioning on the scene and spot inspection

Spot inspection usually is performed at the beginning of the investigative part, often the investigation is based on it. It is no other than the answer without delay, after the site of the crime gets known. Beginning with questioning on the scene is virtually out of question, because the one we get the deposition from is need to be debriefed previously, and it in this case it neither matches the content.

The method of implementation of the two procedural acts have large differences, and the dynamism of their implementation is also distinct. Spot inspection shall be a fast but thorough work to get the most valuable traces and lesions helping the „Hot on the trail“-activity. Over time the traces and lesions can get destroyed, and some kinds of recording methods get out of question. In case of questioning on the scene the time factor takes a backseat, it is more important to let the person present independent, in his own rhythm. There is no need to hurry, it is expedient if everything goes in the lilt chosen by the debriefed person, so he is going to have enough time to unfold.

Spot inspection is an objective, particular research, during which - based on the traces and lesions found on the site of crime – we try to evoke the situation in our minds with the help of imaginary reconstruction. All of the relevant elements of the events get recorded, it is the fact-recording. In contrast, questioning on the scene is meant to deal with just „one piece of the cake“, only with a little phase of the site, a key-act of the event. In this case imaginary reconstruction will not be attempted, but rather the reflecting of memories will be reconstructed, controlled.

Applying the spot inspection is a decision of police, when it shall be decided if it is needed, and the help of an external person is unnecessary. By contrast, questioning on the scene has two prerequisites. One of them is a procedural precondition – even it is logically justifiable -, to debrief the person beforehand, which gives a base to questioning on the scene. The other precondition is the initiation and active participation of subject of the procedure, which is no other than a directing process, during which the member of the authority has the role of „subordinated party“.

The venue of the procedural acts are different, too. Meanwhile the inspection is untouched by the authority, it only reflects the forthcome changes. questioning on the scene happens on a site which is not the same anymore as it was at the time of the crime, and it carries the interference of the investigating authority.

- Debriefing and questioning on the scene

Debriefing is the prerequisite and also the element of the questioning on the scene, but in this chapter it is not about this fact.

One of the most widespread method to cognize the reality is the verbal communication itself. In case of debrief usually a correct scene springs in the mind of the operator, but it can be different individually. This skill depends on how the subject can his/her memories recall. We have to accept the fact that not all of the people have perfect, recollective memory. There is verbal, logical and visual memory. Individually others dominate.

Questioning on the scene – correlated with debriefing – is bound to a concrete venue, in concrete material atmosphere, where the subject has experienced the events, or committed his act. This debriefing that happens in a cognized spot typically helps to recall such memories which could not be brought up at another sites (in a debriefing room at the police). We can see the excess in the thought-provoking effect of being at the site. For the depositor it is easier to open up, and he can show relevant acts more illustratively, as he could do it between sterile „police-walls“. Debriefing is an imaginary reconstruction, questioning on the scene is an activity-reconstruction.

- Questioning on the scene and reconstruction

These two probative proceedings have plenty of analogies, and it often occurs, that reconstruction rather suggests to a questioning on the scene, and vice versa. One of the palpable differences is their aim. Reconstruction shall control if an incident could happen in the told way or not. If it will be laid down about an act, that it could happen, that will be a probability-result – it could happen this way -, but if something will be bowled out, that will be a categorical-result – it could not happen this way. Questioning on the scene – as it was mentioned above – is about only a part of the act in this case too. However it can be purposed to appoint if at the debriefing on the spot purchased informations in fact can be real, as the debriefed person told it, but its relevancy is on the lifelike and free introducing and the on the right cognition of the site. While at the probative attempt the authority and the subject have other relations to the result, often they use other plane of thought and logic to present the reality, in case of questioning on the scene the authority and the subject have the same aims about the procedural act. Due to the nature of the activity – active participation – the aim is not the proof based on science theories anymore, but the aftercontrolling. In this case the proceeder examines if the deposition is real.

Reconstruction is realized as a prerequisite in the reconstruction, but at questioning on the scene it is the final goal. It is important to mention, that the debriefed person is replaceable (the act also can be done without him), but at questioning on the scene he or she has key-importance (active participation). Without that person is the questioning on the scene unimaginable, because the concrete memory can only arise in the mind of the debriefed. If we say it is a film, then the depositor is the „main character“, while in case of the attempt only a „crew“ and a „stand-in“ is needed.

In case of the probative attempt the authority is the „scenarist“, because the attempt happens in planned and organised frames, where the authority is the one who makes and directs the conditions of the realization. At questioning on the scene the depositor assigns the methods of the acts, the procedure goes on according to his narration. At this procedural act the main job of the authority is to check the debriefed so well and critically, that they can realize if he shows or says something that could not happen that way – considering the data of the previous debrief, spot inspection, material evidences etc.

Probative attempt is not bound to a concrete place, because if all of the same – relevant - conditions can be created on another place, then it can be prosecuted anywhere. In contrast, questioning on the scene shall happen only at the original site, because it wins home – recalling the memories -only there.

- Questioning on the scene and presentation for identification

In point of their nature the two methods of procedure are quite similar. The object of questioning on the scene can be showing a site or a part of the site, which similarities to presentation for identification. In both case the task of the cognizer is to identify the object or the spot, but at presentation for identification it is the concrete goal, while at questioning on the scene it is just a momentum.

Actually, presentation for identification rarely happens with transporting to the spot, but questioning on the scene shall be put through on the spot of the crime.

Addition of above mentioned thoughts it is determined, that all of the acts have other preparations, tactics, and also their legal regulation.

„Key tasks”

We would not like to introduce the organization and planning tasks of a conductible questioning on the scene, but either way it is reasonable to present some critical points.

- The pre-questioning

The prerequisite of the investigative act – as we referred to it above, it is not just legal – is the pre-questioning. The investigator prepares for pre-questioning with all of the data of the case, he cognizes them and orders to a logical chain. In this chain the debriefer shall find those critical stores, which are only known by the commiter of the crime, or who was there on the site. So it is valid to mention the unique and elaboration. If the debriefed can answer the questions which are tended to details, and these data will reflect on the spot, it will prove the fact of the committing.

- Tactics of questioning on the scene

The fault of validity of questioning on the scene can be the wrong tactics. The investigator shall hand off the initiation to the debriefed person, meanwhile he compares the narration with the extant data with imaginary reconstruction. If there is contrast between the known and on the spot described data, it shall be exonerated, the solution shall be found, without taking away the guiding from the debriefed. If it seems just a little bit directed by us, it will be not considered as a proof anymore. This task needs a large knowledge about the case, preparation and also analyzing skills. Signal verbal expression skill, high-level academic knowledge and pretty good memory shall be hand in hand to successful realization (not mentioning questions of organising, planning and controlling).

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