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CRIMINAL PROFILING IN CRIMINAL PROSECUTION: APPLICATION AS AN INVESTIGATIVE METHOD AND EVIDENCE

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Abstract: The purpose of this work is to analyze the possibility of applying the investigative technique known as criminal profiling in the field of preliminary investigation, as well as its use as a means of evidence in criminal proceedings. Bearing in mind that despite all its historical development and relationship with the sciences of criminology, sociology, psychology and criminalistics, its scientific validity is still the subject of discussion among specialists in the field, which raises questions about its validity and effectiveness in criminal prosecution. Furthermore, it is opportune to correlate the theme with the current Brazilian scenario regarding the relentless and constant increase in crime rates, a chaotic situation that is plaguing the country and calls for innovations in the area of investigative procedures, especially with regard to violent crimes, since, unfortunately this scope is completely outdated, obsolete and unable to keep up with the growing wave of violence in the country. Faced with this problem, there is an urgent need for the State to encourage the improvement of the Brazilian investigative structure by promoting research that explores the validity of new and promising techniques such as criminal profiling in order to obtain an intelligent and improved investigative system. This is an exploratory and qualitative research, in which the dialectical approach method is applied, as well as the historical procedure method and indirect research technique through documentary and bibliographical research.

Keywords: Criminal Profiling. Profiling. Investigation. Expert proof. Criminal proceedings.

INTRODUCTION

The present work aims to provide an analysis of the scientific validity of the criminal profiling technique and its possibility of application as an improvement in preliminary investigation, as well as its admissibility as a means of evidence. The motivation for the study was the wide range of violent crimes in the country.

It is worth highlighting the relevance of criminal profiling, an alternative that is little encouraged in our country and which contains numerous methods capable of speeding up the investigation and therefore the entire criminal prosecution, making the process faster and more effective. It is based on information extracted from the crime scene, correlating statistics and variables with the aim of proposing a profile of the likely perpetrator of the crime, guiding investigations in this direction and restricting the search field.

Therefore, regrettably, the investigative police in Brazil are lacking in terms of psychological analysis, making investigations rigid and incompatible with the excessive scope and speed of crimes committed in the country. There is little study in this area in order to improve it. On the other hand, we have an increase in the use of the technique in countries such as the United States of America, Canada, in part of Europe such as the United Kingdom, the Netherlands and Germany, in addition, the same occurs in Portugal, all with positive results rates.

However, there are controversies regarding the validity or otherwise of criminal profiling both in the scientific field and in the context of criminal prosecution, controversial points that must be analyzed to investigate this technique considering its origin, characteristics, objectives and application. As well, it is essential to compare these conclusions with the current Brazilian panorama regarding its investigative context.

It is evident that the country's investigative police lack improvement in terms of intelligence and its current structure is obsolete when compared to the constant evolution of society and consequently the crimes that permeate it. In this sense, it is essential that there is a change in the entire system that permeates criminal prosecution and especially regarding the inquisitorial phase with the improvement of investigative means.

From this perspective, it is urgent that preliminary investigation be implemented with new instruments, especially with regard to the investigation of violent crimes, valuing the search for new techniques that, as long as they are valid, act to encourage criminal prosecution and are disseminated as a form of professional specialization with the purpose of perpetuating a new culture in Brazilian research.

COMPOSITION AND DEVELOPMENTS OF CRIMINAL PROFILING

CONCEPTUALIZATION OF THE METHOD

Criminal profiling, also known as offense profiling or investigative profiling, has as its source the development of sciences such as criminology, sociology, psychology and criminalistics. It is considered a forensic technique that makes the correlation between the individual's personality and their criminal behavior, with based on the characteristics of the crime, in an attempt to establish hypotheses about a criminal such as identifying the agent's personality traits, behavioral tendencies and geographic locations.

A forensic technique that seeks to provide investigative agencies with specific information that helps focus attention on individuals with personality traits that

parallel those of other perpetrators who committed other similar crimes (GERBETH, 1983, p. 236).

Under this logic, its purpose is to obtain an understanding of the individual who committed the crime, in order to guide investigations and issue recommendations in various investigative areas. To this end, it works to prepare an analysis regarding the set of information extracted from the crime scene, working with statistics and correlation of variables culminating in the proposition of a criminal profile that will be disclosed.

This way, it works in the formulation of criminal profiles, which are conceptualized according to Kocsis (2003) as a crime scene investigation technique, used to analyze patterns of behavior that best define a violent crime or a series of crimes that may be associated, with the purpose of identifying the characteristics of the presumed offender. Once classified, such characteristics can even be used in another similar crime, analogously.

This technique aims to predict the behavior, as well as personality characteristics and sociodemographic indicators of the offender who committed the crime, narrowing the field of suspects and contributing to their arrest. From Toutin's (2002) perspective, profiles are the virtual construction of a psychological, typological, physical and social profile of an unidentified individual, likely to have committed a crime.

It develops beyond the initial application to investigations and its focus on psychopathologies to cover the entire range of crimes and in particular violent crimes such as those described by the National Secretariat of Public Security as Intentional Lethal Violent Crimes (CVLI): Homicide (article 121, penal code), bodily injury followed by death (article 129, § 3º, penal code) and robbery followed by death (article 157, §3º, II, penal code). In addition, crimes of a sexual nature such

as rape (article 213, penal code), as well as kidnapping and false imprisonment (article 148, penal code).

The many practical and psychological questions raised by this profiling activity include points of inference and prediction about criminals and their respective offenses, both about their characteristics and the specific patterns of their actions. Thus, the great complexity of information management and inference points to the need to understand investigative decision-making and how it can be directed.

It constitutes a complementary element of criminal investigation, as through this technique investigators can develop a description of the offender based not only on eyewitness testimony, but on behavior evidently exhibited during the commission of the crime, aiming for greater effectiveness in preliminary investigation, especially in relation to cases that demand more speed, whether due to the agent's dangerousness or the media exposure that provokes social outcry.

Since the 1970s, it has undergone tangible evolution in terms of dissemination and use as an instrument to support the work of the criminal investigation police. Given the media exposure of the phenomena of crime and the consequent impact on society, this instrument has shown, from the point of view of scientific publications, a gradual interest, however, the range of scientific work developed in recent years has demonstrated the existence of a gap between its increasingly trivialized use and the lack of scientific support for its application.

Regarding its need, Brazil currently has an essential demand for techniques that will assist criminal investigations considering that according to official data from the Mortality Information System, of the Ministry of Health (SIM/MS), in 2017 there were 65,602 homicides in Brazil, which is equivalent to a

rate of approximately 31.6 deaths for every one hundred thousand inhabitants. This is the highest historical level of intentional violent lethality in the country.

Thus, it appears that many violent crimes under criminal investigation require a new look, new technologies and methods, especially those that have a theoretical and methodological framework with evidence of validity and reliability that enable the formulation of criminal profiles.

HISTORICAL DEVELOPMENT

Before delving into the essence of criminal profiling, it is essential to understand the entire path taken up to the present day and what are the sources of emergence of this theme so that the growth and depth of positions and philosophies that allow the understanding of what has already happened and of what is still happening today.

It is a recent and developing technique that emerged within the scope of Forensic Psychology and brings together a set of methodologies, as it is based on the evolution of other areas of science, therefore, due to the lack of investment in the area, it has not yet there is the profession of profiler. Profiling is seen as a specialization for professionals who examine the criminal phenomenon, being able to carry out the activity in forensics, investigation and other contexts.

A priori, criminologists such as Cesare Lombroso and Gerald Fosbroke developed the thought that some people had a propensity to become criminals and that they could even possess visible traits or qualities, which when identified would help in recognizing potential criminals and predicting certain behaviors. However, due to the absence of a scientific basis, this idea perished and is not much commented on today.

However, through the studies launched by these criminalists, at the end of the 19th century the police began to be more cautious and carry out more systematic examinations of the crime scene and evidence. The modernity of forensic science was progressing and investigators began to use new tools, one of them, criminal profiling.

One of the first known examples of the use of profiling (although the term itself only began to be used basically a century later) was a case that occurred in 1888, which involved the cruel death of five confirmed victims and their killer named himself through a card like “Jack the Ripper”. It is a famous case that was never solved, however, the attempt to improve the investigation can be seen when, through the study of the victims’ bodies, it was discovered that the criminal had great skill in mutilating and removing organs, raising suspicion to someone in the medical-surgical field or a butcher. This helps to reduce the investigative field, which is essential when it is necessary to act quickly to save lives.

Therefore, the theme emerged at a time when Mental Health professionals were called to provide support in some criminal investigations involving, in the vast majority of cases, unusual crimes. Another crime was in 1957 at the NYPCD (New York City Police Department) where help was requested from a psychiatrist named James Brussels in investigating the crime that would later become known as the “crazy bomber” responsible for 30 bombings in 15 years. In 1964, the same psychiatrist used the same crime scene analysis technique to assist in the investigation of a Boston strangler, this time for the BPD (Boston Police Department).

At this moment in history, an important milestone in the development of criminal profiling takes place, the FBI begins the creation of criminal profiles, with an FBI academy instructor called Howard Teten

who began to develop profiles for agents, in a more informal way and based on their own studies on the subject. However, in 1978 the FBI established a psychological profiling program, called the Psychological Profiling Program and in 1982 the BSU (Behavioral Science Unit) received an incentive from the National Institute of Justice to expand the idea in a scientific way.

Thus, three years later the most important growth in the history of criminal profiling appears, with Dr. David Canter, a psychologist from the University of Surrey, England, in collaboration with the Police, carrying out a series of investigations into violent crimes and developing declaredly accurate profiles.

From this moment, Dr. Canter created the first Graduate Academy of Investigative Psychology, at the University of Liverpool.

Furthermore, there are two enriching participations that must be mentioned, in the late 80s Dr. Milton Newton created a preliminary research analysis using geographic principles and in 1995 there was also the participation of Kim Rossmo, the creator of geographic profiles who collaborated with investigations.

THE DIFFERENT APPROACHES TO THE SAME TECHNIQUE

Given the complexity of constructing this technique, the execution of criminal profiles is divided into different approaches. In accordance with Montet (2002), the different approaches appear as complementary, which suggests that a collective and multidisciplinary approach optimizes the chances of expert success and increases the probative force of expertise in criminology, victimology and criminal profiling, with preventive purposes.

In this segment, it begins with the so-called Diagnostic Evaluation, which sought to relate knowledge of Psychiatry, Psychology and Criminology and represent an accessible

way of approaching profiles of violent crimes, privileging the motivation behind the conduct that leads to the commission of the crime.

It served as inspiration for the emergence of another approach, this time called Criminal Scene Analysis, where a relationship with the same sciences mentioned in the previous approach is still observed, work developed by the FBI's Behavioral Science Unit, which were dissatisfied with the clinical perspectives brought about by the first approach mentioned above, culminating in the development of one that paid attention to the needs of personal law enforcement in the investigation of violent crimes and that was easily understandable and accessible to the police.

This way, there represents an important milestone for the development of this tool, by operationalizing a deductive analysis of the scene of a violent crime. However, another approach emerged known as Investigative Psychology, which approached the concept of profiles from a methodological basis indicative of research practices common to the social sciences. The eminent David Canter, father of investigative psychology, prescribes this:

The domain of investigative psychology encompasses all aspects of psychology relevant to the conduct of criminal and civil investigations. Its focus is on the ways in which criminal activities can be examined and understood so that crime detection is effective and legal prosecution is appropriate. As such, investigative psychology is concerned with the psychological contribution to the full range of issues relating to management, investigation and criminal prosecution (2000, p.1091).

It is essential to analyze that the ways in which each of the approaches seeks to establish a relationship with the scientific perspective are different, for example, the criminal typologies developed by the last approach are designed based on a set of theoretical models of a psychological nature,

whose function is to establish a relationship between the characteristics of the offender and the aspects that characterize the crime scene, integrating, according to David Canter, a specific discipline of Psychology.

Under this reasoning, there is yet another idea formulated by a portion of criminologists which is based on the fact that profiling must be based individually on the details of each case rather than on statistics and generalized characteristics of groups, because there are always offenders who do not mix with the group. Therefore, Brent Turvey, the forensic psychologist who helped found the Academy of Behavioral Profiling (BEA) in 1999, defends this approach called Behavior Evidence Analysis, which focuses on the details of each crime without taking into consideration, general premises or making predictions about the likely perpetrator based on statistics. This approach is limited to producing deductions only regarding evidence of the crime specifically addressed.

Therefore, the development of the criminal profiling technique requires systematic work to study the effectiveness of each of the methodologies, given that the typologies obtained are of utmost importance both when acting in intervention in cases of unsolved crimes and also in a more broad aim to characterize the complexity and each type of violent crime, that is, it intends to guide professionals who deal with this reality, whether from the perspective of foreseeing characteristics or from the perspective of police intervention.

STRUCTURE, APPLICATIONS AND OBJECTIVES

Precisely describing the objectives and structure of criminal profiling is not simple, partially because of the different disciplinary perspectives that permeate the technique and partially due to the diversification of concepts surrounding the practice. Despite the variations, it is possible to discern an underlying consensus, since, for the vast majority of scholars, criminal profiling consists of information that predominantly serves to describe biological characteristics of the likely agent who committed the crime. Regarding this topic, Tânia Konvalina-Simas is the European representative of the Mexican Academy of Forensic Investigators, as a specialist in Forensic Criminology:

Criminal Profiling or behavioral analysis in an investigative context seeks to interpret all behavioral clues related to an occurrence, whether social, biological or psychological in nature. The triangulation of these characteristics will allow the construction of an approximate profile of the offender and provide clues to direct the criminal investigation. Other applications of this behavioral analysis technique may include developing suspect and witness interview strategies, kidnapping strategies, hostage negotiation strategies, and, in the context of criminological research, indicating trends, exposing phenomena, and suggesting new avenues for understanding, preventing and combating crime (2012, p.14).

In view of this, criminal profiles typically contain information about the likely offender considering the following: Age, gender, criminal history, professional training, family characteristics, social habits and interests and various personality characteristics. Furthermore, they often include information pertinent to the approximate location of where the criminal resides and this type of information is called geographic profiling according to Canter (1994) and Rossmo (1999).

In fact, regarding geographic profiling, there is work in progress in Brazil in this area, in which violent crimes are studied that are committed with a certain frequency, such as rape, using as a basis the already convicted criminal in order to identify the agent's comfort zone. by triangulating the crimes to investigate whether this area of the comfort zone coincided with the location of the offender's residence or work, or even whether he habitually committed the crime in areas where he usually passed through. With the intention of establishing a link between the location of crimes and the offender's comfort zone, this work has already been carried out abroad and obtained very satisfactory results.

It is essential to mention one of the main criminal profiling tools developed by the FBI, in which an analyzed crime will be categorized as organized or disorganized. A crime defined as organized presents signs of careful planning, such as attitudes that demonstrate control at the crime scene and concealment of a corpse (they can even transport the body, which makes police work difficult) and this implies an offender who has higher intelligence, academic training, are usually married or have a partner, seek out victims who are generally unknown and rarely leave instruments used in the crime behind.

Those defined as disorganized, in turn, are spontaneous and do not plan the crime, which for this reason tends to occur in their comfort zone, demonstrate anxiety at the scene or signs of sudden violence (when they initially do not have the intention to kill), in addition, the time is prolonged at the place where the crime was committed (the time taken as a base is 10 to 15 minutes, exceeding this range is considered prolonged) the offender in this case is considered as an individual of low intellectual level, lives alone or with the parents and who normally does not hide the body in addition to usually leaving the

instruments used at the scene of the crime.

When describing the application of criminal profiling, it must be emphasized that, contrary to many fictional media portrayals, criminal profiling alone does not solve crimes. Instead, criminal profiling is better defined as a resource that can be used to assist a criminal investigation when conventional methods have stalled or even failed to identify the perpetrator.

It is important to add that both criminologists and psychologists point out some limitations to this classification, as not all criminals fit into one of the categories and recently the FBI and other profilers have begun to detach themselves from this classification by recognizing that many crimes end up interspersed between the two extremes.

Therefore, when the technique is added to the set of actions in the investigation, it acts in two ways: Developing a descriptive model of the characteristics of the likely agent and providing tactical suggestions for the criminal investigation.

Although the first objective is self-explanatory and characterizes the information inherent in a criminal profile, the second objective consists more of an assessment of how the information contained in a profile can be used and effectively applied, largely depending on the particular circumstances of the crime under investigation.

Under this logic, the most conventional applications are listed as follows: A guide to potentially identify suspects or how to prioritize the investigative line on certain suspects, as well as improving police action to significantly reduce the practice of other similar crimes focusing on operations surveillance and search and seizure.

Not all crimes are capable of being profiled, the majority are contact crimes as they are the most likely that the motivation and nature of the conduct will be discovered through

analysis. crimes of a sexual nature such as rape, sexual abuse and pedophilia or involving torture, evisceration, mutilation after death, fires, murders as well as crimes with a Satanist motivation using rituals. These are crimes that generally occur to fulfill a pressing need for the perpetrator.

Although the applicability of this technique is traditionally associated with the needs of criminal investigation, it is worth highlighting that criminal profiles are very useful in later stages, in terms of identifying and detaining the criminal, as well as possibly being used as evidence. Thus, at this stage, there is an expansion to integrate the definition of communication strategies with the criminal, including involving police interrogation or negotiation (Louceiro, 2008, cited by Soeiro 2009). Thus, the applicability of criminal profiles, as they can currently be defined, comprises a set of aspects that may exceed the scope of criminal investigation.

SCIENTIFIC VALIDITY

The scientific method is a way of investigating how or why something occurs through the development of hypotheses and tests, therefore, it consists of a structured process designed to build scientific knowledge involving observation, premises and deductions, all permeated by critical analysis. Through this, testable hypotheses are formulated that can evolve into scientific theories.

John Thornton, criminalist and professor of forensic science at the University of California (UC) at Berkeley defines it even more densely:

Induction is a type of inference that proceeds from a set of specific observations to a generalization, called a premise. This premise is a working assumption, but it is not always valid. A deduction, on the other hand, proceeds from a generalization to a specific case, and this is generally what happens in forensic practice. As long as the

premise is valid, the deduction will be valid. But knowing whether the premise is valid is the name of the game here, it's not hard to be fooled into thinking the premises are valid when they're not. Forensic scientists have mostly treated induction and deduction casually. They failed to recognize that induction, not deduction, is the counterpart of hypothesis testing and theory review. They tend to equate a hypothesis with a deduction, which it is not. As a consequence, a hypothesis is often stated as a deductive conclusion, when in fact it is a statement awaiting verification through testing (1997, p. 13).

In agreement with the statement that criminal profiling consists of a set of deductions about the qualities of the possible perpetrator of a crime, it is important to highlight that there is a difference between deduction and speculation. Deduction is a logical analysis that relies on evidence to reach a conclusion unlike speculation which is a conclusion based predominantly on abstract reasoning, therefore, without evidence. In this sense, it is up to the forensic examiner to make sure that their speculations are contained and that their work is based on logical and rational evidence.

There is controversy regarding the scientific bias of criminal profiling since many forensic examiners express ambiguous stimuli, even characterized as vague since evidence can be interpreted in more than one way depending on the variety of subjective influences. According to Paul L. Kirk (1953) Physical evidence cannot be wrong and cannot be perjured, only in its interpretation can there be an error. Because of this, the practice has been questioned by experts in the countries that use it, precisely due to the lack of discussion about its reliability, validity and admissibility within criminal prosecution.

In this sequence, when forensic investigators are questioned about the subject, they claim to be objective or try to get as close as possible to this objectivity when performing

their criminal profiling analyses, as well as claiming that their personal emotions and beliefs do not influence their conclusions regarding the crime. However, to say anything other than this would be completely contradictory to the essence of criminal investigation, which values detachment from personal opinions and objectivity.

Many, perhaps even most, forensic scientists are not only unaware of the scientific method, but ignorant. I do not believe that forensic scientists do not have the ability to defend their use of the scientific method, but that the need to do so has generally not been imposed on them (THORNTON 1997, p. 485).

From this perspective, it appears that this is a method that will be reliable depending on the correct use of the techniques in the specific case, as long as there is reliability and scientific recognition in its applicability. It is a fact that vagueness and uncertainty permeate the results of the method, given that, despite the delimitation of the profile of the probable criminal facilitating his arrest and even making it possible to predict his next acts, he is still a human being and there is no way to If you are absolutely sure of how you will act, then unpredictability must be taken into consideration.

In view of the above, it is concluded that even after years of development of criminal profiling there is still difficulty in scientific proof. The technique covers several sciences such as psychology and criminology and is supported by numerous scientific studies through data collection, as well as interviews, however, it requires a lot of improvement and reinforcement in studies in this regard. Mainly in Brazil, there is almost no talk about criminal profiling and practically all the material about it is produced abroad, which may not adapt correctly to Brazilian soil, since behavioral patterns can change in certain aspects according to the social environment in which you are inserted.

CORRELATION BETWEEN CRIMINAL PROSECUTION AND CRIMINAL PROFILING

PRELIMINARY INVESTIGATION AND ITS ROLE IN THE FORMATION OF THE POLICAL INQUIRY

Criminal prosecution or persecutio criminis symbolizes the exercise of the State's punitive intention, since it exercises jus puniendi exclusively and has the power-duty to apply criminal law to offenders.

It is comprised of two phases: The first, called preliminary, is seen as the investigative phase, represented by the Police Inquiry and the second corresponds to the procedural phase, submitted to adversarial proceedings and represented by the Criminal Action that exists from the provocation by the offer of a complaint.

At first, it is worth highlighting that the pre-procedural phase is indispensable to the criminal process, with the preliminary investigation being a fundamental point, since it is not possible to accuse an individual without first carrying out due investigation in order to gather evidence that justifies the triggering of the next phase.

In this context, the preliminary investigation is a procedure that precedes the process, whose immediate objective is to investigate the crime itself as well as its authorship, gathering sufficient grounds for the legitimate holder to complete the filing of the criminal action as provided for in article 41 of the Code of Civil Procedure. And this obligation prevents the inauguration of the process without legal support that supports the action that must present just cause.

The investigative phase or preliminary investigation consists of the first major moment of the criminal prosecution, prior to the process, since it has the purpose of, through the gathering of acts of investigation

of the circumstances, signs of authorship and materiality arising from the notitia criminis, providing subsidies (when case) to the filing of the complaint and the criminal investigation. Its main characteristics are: Autonomy and instrumentality.

The previous persecution presents two characteristic notes that deserve to be highlighted: instrumentality and autonomy. Firstly, it is an instrumental procedure for criminal action, as it is intended to clarify the facts contained in the crime report, providing support for the continuation or archiving of the criminal prosecution (MACHADO, 2010, p. 8).

Therefore, it is understood that it is up to the State to carry out preliminary investigation, through a set of activities developed in a chained manner by State bodies that intend to bring together two fundamental elements for offering the complaint: Proof of materiality and evidence of authorship of the crime, in order to constitute just cause for the process.

Thus, as it is not a procedure but rather a documentary means, the rule did not determine the concatenated sequence of acts that will or will not make up the investigative notebook, given the dynamism of the investigations, remaining at the discretion of the Police Chief. This way, their acts have a preparatory function for the process or demonstration of the impossibility of a Criminal Action.

THE EXPERT TEST IN BRAZIL

Proof, which comes from the Latin verb ``*probare*`` which has the meaning of persuading, demonstrating and examining, is an instrumental element that enables the investigation of the facts opposed by the parties and aims to reconstitute the criminal fact and collaborate in convincing the judge that it can be described as the recipient of the evidence. It acts by demonstrating the veracity or authenticity of a statement or fact, proving

its existence, according to jurist Fernando Capez:

To the extent that he did not witness the fact that is submitted for his assessment, it is through the evidence that the judge will be able to reconstruct the historical moment in question, to decide whether the infraction, in fact, occurred and whether the defendant was its author. Only after this factual dimension of the process (quaestio facti decision) has been resolved, in the mind of the judge, will he be able to apply the law, that is, resolve the quaestio juris (2017, p. 247).

Under this logic, according to Lima (2017), evidence is constituted by acts carried out by the parties and the judge, as well as by third parties with the aim of providing the judge with sufficient information to form his conviction about the existence and veracity of the fact. In other words, it acts as an element of composition of the decision that will be handed down by the judge, in which free motivated conviction prevails, as stated in article 155 of the Code of Criminal Procedure:

Article 155. The judge will form his conviction through the free assessment of the evidence produced in judicial proceedings, and cannot base his decision exclusively on the information collected in the investigation, with the exception of precautionary, non-repeatable and anticipated evidence (Brazil, 1941).

Expert evidence is essential for the criminal process and acts to elucidate the facts that gave rise to the crime, as long as he is a passerby, as provided in the Code of Criminal Procedure, in the caput of its Article 158 regarding the concern and essentiality of the examination of corpus delicti in crimes that leave traces “when the infraction leaves traces, it will be essential to examine the corpus delicti, direct or indirect, and the confession of the accused cannot replace it” (Brazil, 1941).

In this field, criminalistics operates, which is extremely important as it ensures that the evidence will have a scientific pillar and despite there being no hierarchy between evidence in criminal proceedings, expert evidence precisely because this scientific basis ends up receiving greater relevance compared to other evidence.

In this sense, Lopes Jr. (2016) discusses expert evidence, stating that it is of great importance in the criminal field as it is less susceptible to human influence when compared to subjective evidence, such as testimonial evidence. Furthermore, the scientific process in the production of expert evidence brings reliability and imparts great impartiality to this means of evidence, in addition to moral and ethical valuation, which is fundamental for a fair and duly motivated decision. The illustrious Bonaccorso (2009) points out that expert evidence is an important weapon for reconstructing the facts in the process. It also gains more importance in the criminal process, being, in the form of corpus delicti examination, considered indispensable in infractions that leave traces. In fact, the absence of this examination implies the nullity of the process, such is its relevance. Thus, the Code of Criminal Procedure establishes:

Article 564. Void will occur in the following cases:

[..]

III - due to lack of the following formulas or terms:

[..]

b) the examination of the corpus delicti in crimes that leave traces, except as provided in Article 167 (Brazil, 1941).

The examination is carried out by a criminal expert who must have a higher level of education and have been approved through a public examination to practice the

profession. The precariousness of Brazilian criminal expertise is notable, with the main reason being the lack of personnel and insufficient equipment combined with the poor distribution of experts in the country. Furthermore, another perceived flaw is the lack of adequate isolation at the crime scene, something that is essential for the production of appropriate evidence. In view of this, it is evident that there is a lack of improvement in the activity carried out by criminal forensics as well as greater investment in the area.

According to the Brazilian Criminalistics Association, while Brazil solves, on average, 5% to 10% of homicides every year, the United States solves 65% of cases; France, 80%; and England has a homicide solution rate of 90%. However, in cases with great national repercussion, most of the time, exemplary expert work is seen, which masks the real situation faced every day in the countless crimes that plague the country, since the essential thing is to achieve satisfactory work. in most cases and not just in a selected few. Mainly with the abundant range of violent crimes in Brazil, which implies more than ever the urgency of a respectable forensic activity.

It is from this perspective that it is necessary to analyze the possibility of using criminal profiling in the field of preliminary investigation since Brazilian criminal expertise lacks refinement, in the same way that it is vital to reflect on its usefulness or not as a means of proof in the development of the criminal process, since there is no certainty about its scientific nature.

CONTROVERSIES ABOUT CRIMINAL PROFILING

The previously conceptualized criminal profiling must not be misrepresented and understood as a labeling of individuals prone to committing crimes, nor must it be restricted to a purely psychological interpretation of the possible criminal agent. It is applied in crimes that do not leave a crime scene with a wide variety of traces and helps in filtering suspects by proposing a profile to be searched.

There are some criticisms regarding the topic, as most of the Profilers do not have specific training to carry out the activity, there is no legally regulated or unionized profession. For Montet (2001, 2002) it is more of a specialization, which acts by fulfilling a main professional activity, however, this fact does not act as an obstacle to the practice of this technique, as investigators, psychologists and criminalists and other professionals capable of understanding the topic can exercise it in research, expertise and even in teaching, giving lectures and courses in order to provide this specialization to other professionals.

Under this reasoning, it is regrettable that even given the great historical burden that criminal profiling has and several years of study on the subject, there is still no incentive to professionalize the practice and there is not even any promotion of specialization itself, since they are There are few courses offered to police officers and other agents in the area and most of those who have this specialization seek it of their own free will. Mainly in Brazil, there is a great delay regarding this topic, addressed by few professionals and when it is mentioned, even among scholars in the criminal area, few have any idea about what it is about.

Furthermore, one of the biggest criticisms corresponds to the unscientificity and vagueness related to the use in investigation, which cannot be considered true due to the principles and empirical approaches

present in the analysis and preparation of criminal profiles. Expectations must not be created about perfect accuracy in the identification of the agent, this is experienced in criminal television programs, in the real world the information obtained through the construction of profiles will immensely help investigations by reducing the field of suspects by detailing the characteristics of the alleged perpetrator of the crime, referring to age, profession, race, gender, actions taken to cover up traces, as well as the criminal's method of acting, based on his *modus operandi* and his behavior in addition to other elements.

Given this lack of technical regulation, it is understood that in the absence of provision regarding the expert procedure, the Criminal Procedure Code must apply its general provisions analogously to similar means of evidence.

There has been some doctrinal discussion about expertise not provided for by law. In fact, the evolution of science happens faster than legislative evolution, hence the difficulty in regulating these other skills. The issue here, however, is not directly linked to the typicality of the evidence, but to the investigative method used by the expert. It is not possible to recognize atypicality in this situation, as expertise is regulated as a means of proof. What is not regulated is the technical procedure carried out by the expert and, we insist, this does not need to be so that the typical nature of the evidence can be recognized. The way scientific work takes place is generally not part of procedural typicality (DEZEM, 2008, p. 114 – 115).

In addition to the factors mentioned above, it is worth highlighting the main thing: The lack of culture. In Brazil, there is no importance that must be directed to this area, both on the part of the State and society in general, and everything that becomes popular on the subject is due to media appeal or in cases of great national repercussion such as the cases Von Richthofen and Nardoni while

reality remains mediocre, with crime rates gradually increasing across the country.

Regarding Brazil, unfortunately there is no significant number of professionals performing this function, most of the references and literature come from outside the country. There is no regulation for its use in Brazil and this demonstrates the enormous delay when compared to countries that have a more valued and consequently more advanced criminology such as England, Portugal, the United States and even Chile and Argentina. In other words, although criminal profiling has its validity questioned, it is indisputable that the countries that adopt, attest and recommend its use in investigative actions

Regarding this great delay of Brazil compared to other countries, the rates of Violence (2019) indicates when dealing with homicides that the rate of elucidation in the country is unknown and the counts tend to be mere estimates because unfortunately, regarding public security in Brazil, there is a lack of reliable data, however, in some states that are known This rate is extremely low, ranging from around 10% to 20%, that is, few homicides in the country are finally investigated by defining the perpetrator and the circumstances of the crime. This occurs because the investigation rate is equally derisory, due to a scrapped and overloaded investigative system due to all the deficient factors already addressed.

Add to this the overcrowding in prisons, the vast majority of which are filled by individuals who were arrested in the act for petty thefts that will boost criminal factions, while the criminals who cause greater damage are not reached due to the lack of promotion in the qualification of police officers and the formation of an intelligent investigative system. It must be noted that tightening criminal legislation is not the solution to reducing the crime rate in the country,

as this attitude has already been taken on several occasions without obtaining a visible response, such as in law 11,343/2006 where there was an increase in the penalty of the crime of drug trafficking and laws 8,330/1994 and 9,695/1998, which expanded the list of heinous crimes.

Concerning this theme, it is understood that criminal intelligence is indispensable for effective crime control, as improvement in investigation guarantees a good execution of the pre-procedural phase and consequently an effective criminal process with fair production of evidence, given that, if It deals with a chain of phases having the preliminary investigation as the basis and ending with the final criminal process. This is essential to reverse the vast majority of homicide cases that unfortunately do not even reach the procedural stage, much less their end.

FINAL CONSIDERATIONS

In view of these controversial aspects, it is concluded that although the topic is still the subject of great discussion regarding its validity or even the possibility of its use as a means of proof, it is a relevant method to assist in the advancements and specialization

of all professionals. of the investigative field. Especially in a country like Brazil that urgently needs advances in this field. Furthermore, it is understood that the execution of the technique must not be done in isolation but rather in conjunction with other forensic techniques and this fact also applies to its use as a means of evidence in criminal proceedings since in our system there is no hierarchy between the evidence, therefore, even being admitted to the production of evidence, it is up to the magistrate to evaluate it together with the other evidence offered in the procedural scope in order to exercise his free conviction to prepare a duly reasoned decision.

Therefore, it is noted that the technique is beneficial to the investigative procedure and as long as its study is encouraged and its application on Brazilian soil is encouraged, there is a great chance of it prospering in the criminal sphere. Brazil calls for an improvement in this area, as crime rates are alarming worldwide and it is clear that the failure of the Brazilian investigative system is one of the main causes, even in the midst of countless other degrading factors that unfortunately affect this country in a structural way.

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