

Exploring Claimed Crime-Related Amnesia in Homicidal Violence: Genuine or Feigned, Investigators Strategies, and Risk for Violent Recidivism?

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Abstract

The aim of the present paper is to review various reasons for studying offenders' memories of violent crimes, with a special focus on claims of amnesia. These reasons concern both criminal investigators and mental health professionals. Claims of amnesia for violent crimes, including murder, are very common and there are therefore important legal reasons for exploring the veracity of crime-related amnesia. Another important reason for studying offenders' memories is that systematic analysis of amnesia claims may help criminal investigators to select strategies that could be useful in interviewing perpetrators of impulsive (reactive/expressive) or planned (instrumental) homicides (e.g. with respect to different phases of the crime and symptoms of extreme specificity). Another reason is related to the assessment of treatment prognoses for delinquents who have committed serious violent crimes and claim to be amnesic. Still another implication, concerns violent recidivism among amnesic homicidal offenders. The review suggests that it is of utmost importance to focus on increasing the competence of interrogators and caregivers as regards how to treat and manage offenders who claim amnesia for severe violent crimes.

Keywords: *Amnesia; Homicidal Violence; Genuine; Violent Recidivism*

Introduction

One obstacle in crime investigations, as well as in various forms of treatment, is that offenders' claim amnesia for their criminal acts. In the legal context, crime-related amnesia refers to a claim raised by offenders that they cannot remember essential details of the crime they have committed. Claims of amnesia are made for a number of various crime events, for example in cases of sexual crime [1], domestic violence [2], fraud [3], but most often in the context of murder or manslaughter - excluding homicides committed by inner-city gangs, organized criminals or terrorists [4]. Of those who are found guilty of homicide approximately a third claim to be amnesic or to have a complete memory loss [5,6] and a large majority of these claims are circumscribed to the lethal violence itself [7,8]. An important issue is then whether such memory loss is genuine or feigned.

According to Schacter [9], there are two obvious legal reasons why it is important to explore crime-related amnesia. First, amnesia raises the issue of automatism, which refers to criminal behaviour that is executed unconsciously and without intent. Second, amnesia bears relevance to the issue of competency to stand trial. An accused who has no memory of the crime cannot plead on his own behalf, simply because he is unable to inform his counsel. In the legal context, it is not amnesia per se that is considered to be informative, but what amnesia reveals about the state of the defendant at the moment he/she committed the crime. In the literature, examples of

“automatic” crimes committed during sleepwalking, epileptic seizures, or hypoglycaemia states, abound [10]. (In Sweden as in many other Anglo-Saxon countries, amnesia does not figure in the list of disorders that typically contribute to “not guilty by reason of insanity” trial outcomes).

Research on amnesic homicide offenders has, however, several other, more practical implications. For example, knowledge about an offender obtained by studying crime scene characteristics and the offender’s behavior will generate prerequisites for interrogation strategies. Interrogations of suspects or perpetrators of homicidal violence are certainly demanding and the interrogator needs to have appropriate knowledge of how, for example, emotional reactions in response to the crime and memory patterns can vary among offenders depending on the alleged motive behind the crime. In analyzing homicidal violence, the distinction between instrumental (planned) and reactive/expressive (impulsive) violence permits exploring several important issues: For example, which type of violence is more likely to lead to confession, denial or claims of amnesia? Does the quality and veracity of memories differ between acts of instrumental violence and reactive violence?

Homicidal violence is often categorized into an either instrumental or reactive type [11,12]. In reactive violence, the attack is driven by an impulsive response which is caused by an immediate negative emotion towards the victim [12-14]. In this category, crimes of passion and bar fights are common. Contrary, instrumental violence refers to a planned and goal-directed attack. In this case, the victim itself has little personal significance and is only used to satisfy a certain need, for example sexually motivated offenders and offenders who kill for economic gain. To characterize violence, several crime scene characteristics are taken into account, for instance if the offender leave the weapon at the crime scene or sexual positioning of the victim’s body, etc.

Although the reactive-instrumental dichotomy is simplified and has been criticized for lacking support in real crime cases that are more complex [15], research have shown that nearly 80 percent of violent offenses can be categorized as purely reactive or instrumental, supporting the dichotomy [16]. In general, the dichotomy is regarded as an important conceptualization when linking violence to psychological characteristics [11].

Another implication of amnesia among offenders is related to assessing treatment prognosis for delinquents who have committed serious violent crimes and claim to be amnesic. Still another implication concerns violent recidivism among homicidal offenders, who claimed amnesia throughout their sentence/treatment, and then are released.

In the following the issues of a) the veracity of amnesia claims, b) strategies when interviewing amnesic offenders, and c) risk for violent recidivism among amnesic offenders, will be discussed in further detail.

Amnesia can be either genuine or feigned

Offenders use violence for different reasons, which also reflects how they relate to and retell the criminal event. How offenders’ narratives look like, if they confess, deny or claim amnesia, is associated with the crime experience. Practically, by knowing important associations between crime features (e.g. instrumental violence) and interrogation behavior (e.g. claims of amnesia), the interrogator can be better prepared for questioning the offender [17]. Although research of offenders’ memory is scant, it has been demonstrated that offenders’ commonly allege memory loss [18]. There are different ways to explain memory loss for criminal offences [18,19]. A common explanation is that crimes committed in a state of altered consciousness, such as in extreme rage, anger or psychosis, are stored in an exceptional context [20]. Later, when the offender has resumed a more calm or normal state, retrieval of crime-related memories will be obscured due to the discrepancy between the internal state at encoding and that of retrieval. Crime-related amnesia may also be related to problems at encoding and storage due to intoxication, head injuries, and brain diseases (cf., organic amnesia). For example, a large proportion of violent offenders are intoxicated owing to alcohol and/or drug use, which undermines the ability to encode and consolidate

detail information in memory [21]. Brain dysfunction due to organic causes is also discussed as a possible cause of amnesia [22]. Still another explanation pertains to failures in meta-memory, that is, some offenders may truly believe they are amnesic while in fact they are not [23].

An alternative explanation, which contrasts the previous explanations for what is regarded as a genuine memory loss in offenders, is that offenders are deliberately simulating their memory problems. A general opinion among scholars is that crime-related amnesia is most often deliberately malingered [24-26], implied by findings from when its authenticity is evaluated by comparing with how a genuine memory pattern usually looks like [9,19,27,28]. Simulation may be used as a calculated defence strategy, partly to avoid or reduce responsibility and punishment (obstruct police investigation), or, as a defence strategy to escape disturbing emotional memories of the crime [29]. As argued by Van Oorsouw and Cima [23] it may well be that offenders who are familiar with the penal system have had more opportunities to experience the advantages of claiming partial or complete amnesia for their crime. In a study involving more than 300 forensic patients in high security settings, Cima, Nijman, Merckelbach, Kremer and Hollnack [30] found that claims of crime-related amnesia claims were especially prominent among recidivists. They found that such claims were related to a criminal career (c.f. prior convictions) and that the most pronounced difference between offenders claiming amnesia and controls was that the former were older and had more prior convictions (i.e. experience). Along the same lines, Santtila and Pakkanen [17] discuss whether criminal background, in terms of convictions and previous prison experience, and age of the suspects are relevant factors in understanding the effects of confessing or denying. It may be assumed that suspects with criminal convictions have a better understanding when it is more advantageous to confess or to resist confessing [31].

Research shows that reactive offenders tend to claim amnesia and thus distancing themselves from the crime, whereas instrumental offenders deny having committed the crime at all [8,29]. This pattern might be associated with offenders' feelings of shame and guilt. That is, reactive offenders supposedly feel guilty of their actions, or are distressed by the crime itself, and may therefore confess as a part of a reparative action or claim amnesia to avoid thinking of the criminal event [17]. Instrumental offenders, on the other hand, usually feel shame, which has a decreasing effect on confessions. At the same time, because instrumental offenders are more likely to have antisocial characteristics and a criminal background, they are not as distressed by the crime itself and the action is not in contrast with offenders' self-image as it is for reactive offenders [17]. This is in accordance with other studies, showing that confessions are in general related to the offenders' perception of the strength of the evidence, internal pressure, and external pressure [8,32].

Strategies in interviewing amnesic homicide offenders

Recent research has studied differences between reactive vs instrumental offenders (type of violence) when it comes to corroborating evidence (technical evidence, offender injury, witness report) and interrogation behavior (confession, denial, claims of amnesia). Findings from a Swedish sample of 207 homicide offenders showed that instrumental offenders denied or confessed, with few claiming amnesia, whereas reactive offenders denied or claimed amnesia, rather than admitted to the offence [8]. Results also revealed different memorial patterns in reactive vs instrumental perpetrators such that reactive offenders confessed more often when there was technical evidence against them compared to instrumental offenders. The weapon used to the greatest extent of reactive offenders was a knife. This outcome is consistent with previous research indicating that reactive murder often contains injuries such as cuts and stabs distributed over the victim's body and face, which suggests an emotional attack. Reactive offenders also had more injuries. Injured reactive offenders were inclined to deny, whereas injured instrumental offenders claimed amnesia more often. In comparing the confessions, injured reactive offenders were inclined to confess to a larger extent compared with injured instrumental offenders. Furthermore, the study shows that strangulation (both using hands and tools) more often committed by offenders who commit instrumental deadly violence. This variable corresponds largely with previous research that instrumental murders included the damage that had been inflicted more manually and was more located around the neck. Moreover, instrumental offenders committed a more prolonged violence compared to offenders who committed reactive violence. There was also a strong tendency implying more confessions with witness reports.

This type of research illustrates some practical aspects of offender profiling, where crime scene characteristics and corroborating evidence have associations with offenders' interrogation behavior. When the violence is reactive, it is likely that the offender has injuries or has left technical evidence behind him. Looking for an unknown offender, this can be used as guidance. Second and most primarily, to know that there exist associations between offenders' type of violence, corroborating evidence, and their behavior during the interrogation phase is as a valuable tool. By tailoring the interviewing strategy depending on the offenders' behavior, an environment to obtain as much information as possible can be created. Findings indicate that reactive and instrumental offenders may need to be approached in different ways. To elicit a confession, it appears as the presentation of corroborating evidence could be an efficient strategy for reactive offenders. However, alternative strategies may need to be applied for instrumental offenders. How these should be designed needs further investigation.

Knowledge about offender's memories will also be helpful in analyzing the way in which offenders describe their memory loss, that is; in distinguishing true from feigned amnesia for criminal acts. Porter and Yuille [33] pointed out that malingerers are more likely to relate symptoms of extreme specificity. For example, many amnesic offenders claim to have total memory loss: "My memory is like a black hole, everything is gone". They might also say that they recall events immediately preceding and following the crime, with a circumscribed memory loss for the act of killing itself. Further, malingerers' claims of sharp limits for beginning and end of the amnesia are quite common (e.g. "from the moment I stepped out of the restaurant door, until I sat in the police car, everything is lost"). Porter and Yuille [33] argued that this is an unusual pattern in clinical cases of both organic and dissociative amnesia, where periods of amnesia are usually gradual and blurred in onset and termination. Moreover, in true amnesia, patients usually have 'islands of memory'.

Another feature among amnesic offenders is the dogmatic nature about their amnesia (e.g. "It doesn't matter if you ask me 5, 10 or even more times, I will never remember anything about what happened that evening"). Schacter [9] argued that false claims of amnesia are characterized by a sudden onset and low ratings on feeling-of-knowing judgements. If, for example, a murder suspect is asked about the possibility of recurrence of memories after being provided with cues, recognition alternatives, more time to think about the event, additional interrogation, visits to the crime scene, and so forth, the malingerer is usually dogmatically negative. Doubt should also arise when suspects with a diagnosis of psychopathy claim amnesia. Psychopaths do not experience the extreme emotions that may undermine encoding of information, but they do have a tendency for pathological lying and malingering.

Taken together, research points towards the practical usefulness of information of crime scene characteristics and corroborating evidence when to tailor interview strategies for reactive and instrumental homicide offenders, respectively. Furthermore, how offenders describe their amnesia (cf., symptoms of extreme specificity) can reveal whether it is genuine or feigned.

Amnesia and risk for violent recidivism

Claims of crime-related amnesia are also important to consider from a risk perspective. More specifically, one might consider the risk for violent recidivism among serious violent offenders who claim amnesia throughout their sentence/treatment and then released. The importance of, and need for, a better understanding of amnesia as a risk factor has been made clear in several case studies. For example, in a Swedish case a young man left his hometown by car, and after several hours of driving, stopped to call his parents-in-law to tell them that something terrible had happened at their daughter's home and that they must go there. The parents soon found their daughter on the floor in a pool of blood in her apartment. The autopsy showed that she had been stabbed to death. During the police investigation, the man claimed to have no memory of what had happened to his fiancé. He could not provide any details, and he could not deny or confess to the crime. He served a sentence of eight years in prison and claimed to be amnesic throughout that period. After being released, he soon moved in with another woman, who was found shortly thereafter strangled to death in his apartment. As in the first murder, he claimed to be amnesic. In the second investigation, however, he was interviewed by an interrogator who used an empathetic style (characterized by cooperation, an obliging manner, a positive attitude, helpfulness, and personal interest in his case, see Holmberg, Christianson and Wexler

[34]). Due to this positive contact, the offender revealed that he had remembered both acts of killing from the beginning. As to his motive for simulating amnesia, he said that even a murderer should not be treated as he had been during the police investigations in the first murder case. This case along with other cases see e.g. Gould and MacDonald [35], pinpoint the highly important issue of violent recidivism among serious violent offenders who claim amnesia throughout their sentence/treatment and are then released.

An appropriate question is whether it is plausible to argue that “claimed amnesia” itself can be considered a risk factor of such importance that it should be incorporated into risk instruments such as the HCR-20 and other risk assessments [36,37]. At present, we obviously lack clear empirical evidence to support such a move. We need to learn more about how to measure and distinguish the risk differential between, for example, claiming innocence and claiming amnesia. Can one of the two be considered worse than the other?

Until future research has pointed out more exactly how we should think about and deal with claimed amnesia, it is important that mental health professionals and others who frequently assess violence risk, consider claimed amnesia to be of importance. In doing this, however, we can presently not rely on a simple rating of whether or not a person is claiming amnesia. A comprehensive risk assessment requires that a thorough interview or interrogation be performed so that professionals can form a well-founded opinion as to the presence of certain traits and possible risk factors in the person under investigation. It is a well-known fact that there is a great variation in how offenders tell about their crimes. Some individuals are help seeking, others are outliving and still others are constantly testing limits and acting provokingly. Some individuals are full of suspicion, while others are extremely difficult to reach. This is partly because offenders demonstrate different psychological defenses and psychological disorders, for example persons who display psychopathic personality traits, schizoid or paranoid personality disorder [38-41].

Conclusion

To sum up, one very difficult obstacle in crime investigations, as well as in various forms of treatment, is undoubtedly when offenders claim amnesia for their criminal acts. Interrogations of such suspects are very demanding, and the interrogator needs to have good knowledge about how type of violence, type of emotions, type of personalities, and interrogation behavior (confession, denial, claims of amnesia) can be used to facilitate and help the interrogator to choose good and effective approaches to the interrogations. A tricky question is how to treat sentenced offenders in various treatment institutions, when the offenders persist in their claimed amnesia. When offenders do this, there are no traumatic memories from the crime scene that can be the subject of therapeutic treatment, no crime-initiating attitude to challenge, etc., and the offender/patient will probably not be very compliant to treatment. Thus, it must be of the utmost importance to focus on increasing the competence of interrogators and caregivers as regards how to treat and manage offenders who claim amnesia for severe violent crimes.

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