



E21 Homicidal Violence: Is It an Admissible Cause of Death?

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After attending this presentation, attendees will be familiar with the criteria for the certification of deaths due to homicidal violence and the legal concerns regarding the designation.

This presentation will impact the forensic science community by the recognition and means of certifying the manner of death in difficult cases. It will also prepare judges and other legal practitioners to understand the criteria for the certification.

In 2008, Donald Cooper, the leader of a Milwaukee drug gang was convicted of two counts of murder in the deaths of two victims found buried under concrete slabs. The jury convicted Cooper despite the fact that the medical examiner was unable to definitively determine a cause of death and instead had certified the death as due to "homicidal violence." In Detroit in 2013, James Brown was convicted of the deaths of four women found locked in automobile trunks who were certified as homicides with no identifiable injuries.

The primary role of the medical examiner or forensic pathologist is to determine and certify the cause and manner of death. On occasion, the exact cause of death cannot be determined within a reasonable medical probability despite the presence of overtly suspicious circumstances and evidence associated with the death. In these cases, medical examiners are likely to certify the death as homicide by unspecified means or simply homicidal violence. In a recent article by Matshes and Lew, the authors developed the following criteria for the certification of a homicide by unspecified means.¹ The criteria include cases, in which, following a complete autopsy, there are: objectively suspicious circumstances of death; no anatomic cause of death; no toxicological cause of death; no historical, environmental, or circumstantial cause of death; and, when a more specific cause of death cannot be suggested by the dataset. The criteria specifically referred to cases where the body had deteriorated, destroying vital evidence and circumstances directly relating to the death.

Although the certification of homicide by unspecified means is accepted by most vital records departments, it remains controversial in the courtroom. Forensic pathologists adhere to a standard of proof as a "reasonable degree of medical probability," well below the "beyond a reasonable doubt" standard of the jury. The lack of a definitive cause of death may severely impact the jury. The determination of a death solely on circumstances, it could be argued, invades the purview of the jury and should therefore not be accepted as an expert opinion by the court. Others argue that the determination of the cause of death, even when the cause cannot be definitively demonstrated, rests on expert's education and experience.

This presentation provides case presentations certified as homicidal violence resulting in judicial convictions. A discussion of the definition of homicide by unspecified means will be presented as well as concerns of judicial acceptance and the role of the medical expert.

Reference:

1. Matshes E. and Lew E., "Homicide by Unspecified Means," *Am J Forensic Med Path*, 31 (2), 2010:174-178.

Homicidal Violence, Death Certification, Evidence Admissibility