Guest Editorial

Absence of Evidence is Not Evidence of Absence

An individual’s freedom, or his incarceration, is becoming increasingly more dependent upon expert testimony. Opinions of such experts, in most cases, are given greater credibility than the victim, the police or the judicial officers who have substantial or specific involvement in the violent act as well.

Bloodstain pattern interpretation is one method utilized when investigating bloodstained scenes. The principle opinion of the expert is that a violent act, real or simulated, can be determined if the bloodstain patterns are consistent with the violent act.

The complete absence of bloodstains on a defendant in a violent act does not necessarily mean that the defendant did not participate in that violent act. Bloodstain patterns are not always present and may not be found even in direct evidence of a violent act.

One could hypothesize numerous theories but never adequately establish the question why the degree of bloodstaining on an assailant does not always become bloodstained when live rabbits are involved. Our experiments indicate that the question is not necessarily a violent act. Bloodstain patterns are not always present and may not be found even in direct evidence of a violent act.

The literature does not address the question as to why the degree of bloodstaining on an assailant does not always become bloodstained when live rabbits are involved. Our experiments indicate that the question is not necessarily a violent act.
to constitute a geometric pattern, it may be possible for a competent analyst to interpret that pattern.

Literature we have reviewed is in good agreement with our own experiments. With this data and with the experience we have gained from investigating hundreds of criminal cases, we conclude that the absence of bloodstaining on a suspect’s clothing should neither exonerate, nor implicate, his involvement in a violent act. The authors have investigated numerous cases where an assailant was not bloodstained at all or had very little bloodstaining on his clothing as compared to the amount of bloodspatter that was present at the crime scene. Although we are frequently asked to testify suggesting there is some significance to the absence of bloodstaining, we reply that we can only interpret the bloodstains that are physically present. No one should speculate as to why a defendant was not bloodstained except in the most unusual cases. We stress this opinion whenever we are asked this question in court.

Exceptions to this rule do occur, however. Such cases are unusual in their physical evidence. For example, a case in the Southwest, a woman was believed to have shot her husband using a .357 Magnum. The entrance wound in the victim’s forehead exhibited classic satellite tear streaks. Blood, tissue, brain substance, and bone fragments extruded from the wound and spattered over the bed, the head board, and much of the bedroom. The wife of the victim was wearing a white, long sleeved nightgown which did not have even one small bloodstain. Her children ran into the bedroom which gave her no time nor opportunity to change her clothes. In this case, the absence of any bloodstaining on her nightgown was very good evidence that she could not have fired the fatal shot.

The presence of bloodstaining on an assailant is the only physical evidence a bloodstain pattern examiner should use when drawing conclusions from a defendant’s clothing. The lack of bloodstaining on the defendant should only be used as a reason for further investigation. In some instances, assailants have been known to either commit beatings, stabbings, or shootings while nude, clean-up after the crime, change their clothing, or confine to a crime that was actually committed by another individual.

A former student submitted a case involving a double homicide where both victims suffered multiple, near contact wounds to the head and upper torso with a .38 caliber handgun. A large amount of bloodstaining was present at the scene. The individual who confessed to the crime said he was wearing the same outfit that he wore when he allegedly committed the murders, a white jogging suit and sneakers. The short time between the crime and the apprehension of the suspect precluded any clean-up effort. No blood was observed nor was any chemically detected on the suspect or any of his clothing. The question we were asked was, “Did this individual commit the crime?” Obvi- ously, this was a case where the lack of bloodstaining provoked further investigation. However, should no exculpatory evidence be discovered, the absence of evidence is not evidence of absence.

If no plausible explanation is offered for the absence of bloodstaining, unsubstantiated speculation as to why a defendant was not bloodstained is unwarranted. Counsel should be referred to the literature where numerous references state an assailant is not always bloodstained as a result of his/her active participation in a bloodletting event.

Assailants may often take extreme measures to prevent bloodstaining of their clothing and themselves before, during, and after engaging in a violent act. Hofmann [6] referred to a case where a suspect had removed all of his clothing prior to his committing a murder. In a second case he described where a psychotic patient wrapped himself in an extra linen in order to prevent bloodstaining of his clothes prior to his committing a murder.

The basis of the bloodstain pattern interpretation discipline is the geometric analysis of the static aftermath that results from a violent act. From such an analysis we attempt to reconstruct the prior events that could have happened to produce the patterns that we have observed. There is no basis for opinions on the absence of bloodstaining if they can not be substantiated through the medium of science. In 1938, Professor Orso [7] made a study in Budapest that demonstrated how the areas of bloodstaining from a blow with an instrument were greatly influenced by the shape of the instrument. For example, his diagrams of a flat surface impacting a victim’s head will restrict the upward bloodstaining as compared to a head being struck by an object having a cylindrical geometry. Simply stated, beating someone’s head with a 2” x 4” doesn’t spatter blood upwards as much as if a baseball bat had been used. It would be erroneous to say an individual could not have participated in a bloodshedding act based solely upon the apparent lack of bloodstains on his or her clothing and/or person. It may be equally erroneous to implicate any individual on an absence of other types of physical evidence.

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One must always know the limitations of his/her discipline as well as his/her own personal limitations within that discipline. Each person must be able to determine when he or she is close to exceeding either of these limitations and never go one step beyond.

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References


