

BRUCE MACARTHUR'S CASE AND THE COMMON FACTOR AMONG SERIAL KILLERS

O CASO BRUCE MACARTHUR E O FATOR COMUM ENTRE OS SERIAL KILLERS

Carlos Roberto Bacila¹ – <https://orcid.org/0000-0001-6158-2970>

Abstract

This work presents an analysis of the case of Toronto's serial killer Bruce MacArthur, focusing on identifying a common factor among the cases of the most worldwide known series assassins. That is, what would be the main difficulty in investigating and holding those involved more quickly, from the perspective of the thesis of stigmas as second code. A comparison among these serial killers was made, confirming that common rules related to stigmas in fact interfere in the criminal responsibility of the person involved in serious crimes, in a way that if the person has no stigma, he/she has little visibility to criminal investigation and accountability, although strong evidences that he/she may have committed homicides are present. In the end, I present some suggestions in order to avoid the interference of stigmas such as negative second codes.

Keywords: Serial Killer; Stigmas; Crime; Bruce MacArthur; Investigation.

Resumo

O presente trabalho apresenta uma análise do caso do serial killer de Toronto Bruce MacArthur, descoberto em janeiro de 2018, procurando detectar um fator comum entre os casos de assassinos em série mais conhecidos mundialmente, isto é, qual seria a maior dificuldade para investigar e responsabilizar os envolvidos de maneira mais célere. Para tanto, utilizo o estudo de diversos casos mais conhecidos de serial killers, nos quais os mesmos fatores estavam presentes quando, já nos primeiros homicídios, o autor apareceu como suspeito, porém foi descartado inicialmente e considerado suspeito improvável. A análise é feita sob a ótica da tese dos estigmas como metarregras. No caso, a ausência de estigmas é observada como um fator comum, isto é, os assassinos seriais não apresentavam estigma, o que se considera um fator decisivo nos casos para a não elucidação precoce. Verifica-se, portanto, que metarregras ligadas aos estigmas efetivamente interferem na responsabilização criminal da pessoa envolvida em crimes graves, de maneira que se a pessoa não tem estigma, tem pouca visibilidade para a investigação e responsabilização criminal, ainda que indícios fortes de que pode ter praticado homicídios estejam presentes. No final, apresento algumas sugestões para que se evite a interferência dos estigmas como metarregras negativas.

Palavras-chave: Serial Killer; Estigmas; Crime; Bruce MacArthur; Investigação.

¹ PhD, Professor of Criminology and Law and Cinema at Universidade Federal do Paraná (Brazil) and Visiting Researcher at University of Ottawa (Canada).

1 INTRODUCTION

In the scope of the criminal studies, much is said about how Criminal Law should only focus on extremely serious behaviors and leave milder conflicts to other legal branches or other social mechanisms to solve them. It is what is called subsidiary nature of Criminal Law or *ultima ratio*². Indeed, this is not the case of serial killers. Serial homicides are characterized by the death of completely defenseless victims and, surprisingly but not rarely, in a cruel and painful way. Lives are lost for no reason or sense, which points out the disregard of the perpetrator towards any notion of respect to human life or to the essence of the human being. Evidently, a ready response from society under the form of a state organization is necessary.

Motivated by the Criminology classes attended at the University of Ottawa and taught by Professor Dr. João Velloso I resumed studying the subject I had addressed in my doctoral thesis concluded in the year of 2004 and defended at the Federal University of Paraná. The thesis is related to a historic revision of the Law under the scope stigmas and prejudices. In this study, I formulated a concept of stigma, which is more flexible to current times and, finally, began to study concrete cases based on this concept. By doing so, I noticed that many mistakes that seemed grave negligence or unusual could be explained rationally by considering stigmas as negative second codes. Second codes are street codes that interfere in people's lives, such as signs that indicate the content of an object. From that, we can have rational and functional second codes in society, as in the case of complimenting or using respectful language. Or else, we can have practical rules that have no social basis and are even mistaken from a historical and practical point of view. Therefore, a stigma constitutes a negative second code that can be observed in a much more objective way than one can imagine. In a more current sense, I understand stigma as an objective impression that has a negative social value. There is, thus, an objective aspect (skin color, religious behavior, woman, poverty, unconventional behaviors, and mental or physical disabilities) that receives a negative social meaning in its subjective aspect (an individual, for example, would not be able to practice any labor activities in the same level as a "normal" or not stigmatized individual).

After I made this study, the analysis of cases turned out to be quite surprising by revealing that, in general, the influence of negative second codes is much more objective than one could image. Therefore, it is not about explicit or vulgar discrimination of people, but subtle decisions that end up in improper or stigmatized prejudice or, as we will mention in this paper, of the invisibility of the perpetrator of serious crimes to the criminal justice system.

Hence, my focus was on the acts of serial killers and their invisibility in most of the offences they committed. Some kind of social camouflage makes them imperceptible to the criminal justice system (judge, prosecutor, police officer) and also to society as a whole (victim, public server, attendant, journalist, reporter). Until one

² BACILA, Carlos Roberto. **Introdução ao Direito Penal e à Criminologia**. Curitiba: Intersaberes, 2017, p. 2 and following.

day, the case comes to light in an exotic way, when most cases could have been avoided, that is, criminals could have been arrested on their second or third homicide.

The issue is related to the selectivity of the system in general, which directs some to criminal accountability, but not others. The image of the funnel, so well taught by João Velloso, is clear in these cases. Who knows how many serial killers got away with being accountable for their crimes due to the faulty funnel of the criminal justice system? We know that Jack, the Ripper, and the Zodiac were never found. On the other hand, the serial killers studied had an easier way to perpetrate dozens of homicides without being noticed.

The case under discussion, the one of Bruce MacArthur, looks like a repetition of many others. It is not my intention to criticize anyone's professional activity whatever that is, the judge who sentenced Bruce for the first time, the prosecutors or police officers who eventually worked on the case. That is not the case, even because not all elements and specificities of the case are available and it is still under investigation. I emphasize the seriousness of police officers and forensic professionals who dedicate themselves a lot to solve complex cases of this nature. On the contrary, my objective is to identify a certain pattern of difficulty in clarifying cases, under the responsibility of the whole society, due to the absence of stigmas in the perpetrator of the homicides.

Evidently, the studies I made are in early stages and must be object of criticism, suggestions and debates. Nevertheless, in my experience in the field, theoretical and statistical studies, I have not found anything different from the funnel that pushes stigmatized individuals rapidly into the criminal justice machine, guilty or not, according to Velloso's argument and, on the other hand, withdraws from the justice tunnel many who should have been kept there.

2 BRUCE MACARTHUR'S CASE

Last year I got to know a great country, exactly when it celebrated its 150 years of existence. Its name: Canada. Here, my wife, my daughter and myself were welcomed with the greatest warmth and kindness that can be expected. We had the honour of living in Kanata, an Ottawa community that made us feel more than at home. I knew a little about the History of this valuable country and I still feel touched to know that Canada fought in the First World War and lost more than sixty thousand soldiers, fought in the Second World War, allied to my native country Brazil, and consolidated its heroic history. I also studied the life of the courageous Terry Fox, whose statue stands in front of the beautiful Parliament, and who showed the world how to fight for an ideal, seeking support to fight cancer. Terry raced gloriously against time. I heard about the recent history of Canada's current flag, the maple leaf on the flag, the maple that makes one of my favorite foods, the syrup. That's why my wife and I put a huge Canadian flag in our living room. We felt honoured to give a talk to Stittsville Rotary Club about "Rotary Club, the Woman and Dale Carnegie". In the event I demonstrated how much Dale Carnegie did for women's emancipation in the first half of 20th Century, without saying a word on human rights³. We were also thrilled by the victory of today's Canadian heroes,

³ The speech was based on Chapter 11 of the biography of Dale Carnegie that I wrote, supporting the thesis that the mentioned author used stigma emancipation mechanisms (woman, elder, handicapped, race, poverty, religious etc.) in his literary language in a revolutionary way. BACILA, Carlos

Tessa Virtue and Scott Moir, ice dancers that pleased us triumphing at Winter Olympic Games and inspiring future new champions. We went through one of the coldest winters in the world, facing the most severe winter in Canada over the last hundred years. We were honoured to survive and find everything beautiful. Our hearts are now very connected to Canada, this heart whisperer country. It makes me remember Arthur Chapman poetry: “*Out where the sun is a little brighter, Where the snows that fall are a trifle whiter, Where the bonds of home are a wee bit tighter, – That’s where the West begins*”⁴.

This whole environment of magnitude made me respect Canada a lot. All this has been completed with the research I have been doing in my study field: the crime. After obtaining my doctorate in 2004, I have always waited for an opportune moment to do my postdoctoral research and it came along due to the precious invitation I received from this very special institution for Canadians, the University of Ottawa. At this house of serious and concentrated studies, I was welcomed by the Criminology Professor Dr. João Velloso. By attending his well-prepared graduation classes⁵ since last year, I realised how much Professor Velloso seeks to inspire his students for critical reflection, in a didactic and quite inclusive way. Of course, I too was inspired by such instigating teaching.

Professor Velloso approaches the subject of selectivity of the penal system in a very original way. Important subject in Criminology, the selectivity addresses the finding that the law is for everyone, but it affects only a few people, while others, even though they have committed crimes, escape criminal responsibility⁶. Velloso does this brilliantly, using the didactic figure of the funnel. For example, if a man perpetrated a sexual assault and he is not investigated, he is not indicted, or he is not convicted due to lack of evidence or lack of conviction or any other reason, we have someone who escaped the funnel that leads to criminal accountability⁷. According to research done in different places and on the most varied crimes, the dark figure can represent up to 99% of the cases. This dark number of crime shows a hole in the system, assume that does not add up. Not to mention the breach of justice, that is, punishing some and letting the majority get away with no criminal accountability. The criminologist Edwin Sutherland, professor of the University of Chicago and author of the famous expression *white collar criminality*⁸, was one of the predecessors of this subject. He reported in a frightening way in the 1930s and 1940s

Roberto. **The Life of Dale Carnegie and his Philosophy of Success**, San Bernardino (USA): Amazon, 2017, p. 179-193.

⁴ CHAPMAN, Arthur. *Out Where the West Begins*. In: FELLEMAN, Hazel. **The Best Loved Poems of The American People**. Thirty-fourth Printing. New York: Double Day and Company, 1958, p. 120.

⁵ Specially the courses that I attended and where I drew many conclusions for this article, in the Law and Criminology Courses (University of Ottawa, 2017) and Sentencing Theory and Practice (University of Ottawa, 2018)

⁶ In the building of Italian Supreme Court in Rome is the inscription: “La Legge è Uguale per Tutti”, that is, “Law is the Same for All”, but in fact, it has not been.

⁷ I mentioned this example of sexual assault because many cases of famous suspects of abuse have surfaced in great profusion recently. Some of these cases have already prescribed or may no longer prove veracity of the allegations. They are samples of a hidden criminality that is probably much more numerous than the example of the famous.

⁸ In 1939 the famous lecture at University of Chicago launched a new concept of Criminology, it can be seen in the article: SUTHERLAND, Edwin H. **WHITE-COLLAR CRIMINALITY**. Indiana. **American Sociological Review**, February, 1940, V. 5, N 1.

that the criminality of man and women, rich and poor, unemployed and working citizens, employees and executives is far higher than imagined and much less punished than one could suppose⁹. Also, as João Velloso pointed out, Sutherland questioned the idea of always connecting crime with poverty¹⁰. At a time when an ever-frightening criminal was pursued – usually described in the book of the Italian physician Césare Lombroso¹¹, Sutherland took another direction, demonstrating that the criminality was present in all social spaces. Nowadays Sutherland’s innovative thesis on the hidden crime figure is well accepted by the prevailing doctrine of criminology¹². Research has been done demonstrating that there is no physical, racial or genetic kind of criminal. But we still have not escaped the selectivity of the penal system¹³.

As I have already mentioned, I also dealt with the selectivity of the penal system and wrote about it, but I was inspired again by the magnificent magisterium of Professor João Velloso. In his lectures at University of Ottawa, Velloso emphasizes the numerous situations in which a crime is committed, but its author is not taken to court for various reasons. One of these reasons can be the belief that punishment is no longer relevant, or the issue has no political appeal, or the police resources are not sufficient or are not available and it is necessary to select one case or another, etc¹⁴. The gentle Canada and Velloso’s magisterial classes led me to think again about a topic that I believe to be my small contribution to Criminology in the area of selectivity of penal system. Then, the Bruce MacArthur case came up.

It seemed to be a horror movie in a haunted house. But it was pure reality. The police of Toronto, Ontario’s capital in Canada, excavated the backyard of a house in the expensive residential area of Leadside and found one body after another. The outcome happened on January 18th, 2018 when Bruce MacArthur was arrested by Toronto police. He was considered a suspect of two disappearances: of Andrew Kinsman and Selim Esen, from Toronto, but the disappearance of Abdulbasir Faiji was also under investigation. Another victim, Dean Lisowick was homeless. Another one was Soroush Mahmudi (disappeared in 2015). Another one, Majeed Kayhan (disappeared on October 2012). Later they verified that a person who was one of his Facebook friends, Skandaraj Navaratnam had also disappeared

⁹ SUTHERLAND, Edwin H. and CRESSEY, Donald R. *Principles of Criminology*. 7^a edition. Philadelphia and New York, J.B. Lippincott, 1966, p. 3 and following.

¹⁰ VELLOSO, João. *Criminologie*. Vol. 49, n. 1, 2016, p. 153-178.

¹¹ LOMBROSO, César. *O Homem Delinquente*. Translated by Maristela Tomasini and Oscar Garcia. Porto Alegre: Ricardo Lenz, 2001, p. 147.

¹² BACILA, Carlos Roberto. *Criminologia e Estigmas*. 4^a Ed. São Paulo: Gen-Atlas, 2015. On this matter: CASTRO, Lola Aniyar de. *Criminologia da reação social*. Translated by: Ester Kosovski. Rio de Janeiro: Forense, 1983, p. 68. SACK, Fritz. *Crime, law and social change – socio-political change and crime: a discourse on theory and method in relation to the new face of crime in Germany*. Netherlands: Kluwer Academic, 1995, p. 53. CERVINI, Raúl. *Os processos de descriminalização*. Translated by: Eliana Granja et al. São Paulo: RT, 1995, p. 165-168. HULSMAN, Louk H. C. et al. *Abolicionismo penal: la criminología crítica y el concepto de delito*. Translated by: Mariano Alberto Ciafardini e Mirta Lilián Bondanza. Buenos Aires: Ediar, 1989, p. 96. LARRAURI, Elena. *La herencia de la criminología crítica*. 2. ed. México (DF): Siglo Veintiuno, 1992, pp. 202-203.

¹³ On the subject beyond the already mentioned doctrines see, for example, CHAPMAN, Denis. *Sociology and the Stereotype of the Criminal*. London: Tavistock, 1968, p. 114-115. Freetranslation.

¹⁴ VELLOSO, João. *Criminology lecture given at University of Ottawa*, Canada on February 2^a, 2018, among others.

in 2010 and Kirushna Kumar Kanagaratnam who had no missing report¹⁵. At the end of Police excavations at Bruce MacArthur's house, bodies were still to be identified¹⁶. Until then an initial number of eight victims was reached¹⁷. The question I want to answer in this brief writing is: what does this serial killer case have in common with the best-known cases?

This is a subject I have worked on and studied for many years¹⁸. In 1994 I joined as Chief of Police in the State of Parana-Brazil and from the beginning of my career I noticed a very subtle relation between the disappearance of a person, kidnapping and homicide. My experience began with a case in which two kids had been taken from home by a man around 40 years old. This man was the father of one of the children whose mother was already divorced. She was living the second marriage when she had her second child, therefore this kid had no relationship to the kidnapper. We located the kidnapper's apartment and after a lot of work we entered the place and I found the two children in shock hidden under a bed. They were in high risk of being killed if we had not entered the apartment¹⁹. The victim in absolute power of a kidnapper is not only a kidnapping victim, he/she is a potential victim of homicide. When children or adults disappear with no reason it is better to investigate indeed.

The following year I went to work in a SWAT in the state capital and soon after, I founded the first anti-child kidnapping police unit in Brazil, called SICRIDE (Disappeared Children Investigation Service)²⁰. In this job, I noticed that some children who disappeared were victims of kidnapping and after homicide. Then I got more interested in investigating homicides. When I had the opportunity, I started

¹⁵ <https://www.thestar.com/news/gta/2018/04/16/toronto-police-to-provide-update-on-bruce-mcarthur-investigation-monday.html>.

¹⁶ <https://www.thestar.com/news/crime/2018/02/13/no-more-human-remains-in-search-for-serial-killer-victims-at-leaside-home.html>

¹⁷ Data until March 7th, 2018. See: <https://www.youtube.com/watch?v=2KhD1WekzfU>. In this interview, based on forensic work, Police presented a portrait of the suspect, to try to identify him with population support and <https://www.thestar.com/news/gta/2018/04/16/toronto-police-to-provide-update-on-bruce-mcarthur-investigation-monday.html>.

¹⁸ I will relate my experience in the police area as a true field research that in fact, cannot be disregarded when analysing criminality. After all, in the words of Gouldner: "The theorist's basic conception of what is socially real and factual is thus rooted in the infrastructure of the man himself, in the local surrounding very close to his life.

Much theory work begins not as an effort to find or establish the facts but to make sense of experience, to resolve the part of it that is unresolved. Commonly, the theorist is trying to reduce the tension between a social event or process that he believes is real and some value that the event or process has violated. Thus theory-making is often an effort to cope with a threat to something in which the theorist is deeply and personally implicated" (GOULDNER, Alvin W. *Renewal and Critique in Sociology Today*. New York: Basic Books, 1973, p. 70).

¹⁹ The complete report of this case, from the investigation until the final outcome can be found at BACILA, Carlos Roberto. *Ação Controlada na Investigação da Criminalidade Organizada*. In: **Criminalidade Organizada. Investigação, Direito e Ciência**. Coordenação: Eliomar da Silva Pereira, Guilherme Cunha Werner e Manuel Monteiro Guedes Valente. Coimbra: Almedina, 2017.

²⁰ Years later a final paper written by Ana Luiza Verzola and Cléber Gonçalves about SICRIDE was classified in the 2nd place in the category book-reportage in a journalism contest (Prêmio Sangue Novo de Jornalismo Paranaense).

It was also classified as one of the five best academic papers of South of Brazil at Intercom communication congress. See: <https://www.unicesumar.edu.br/jornalismo-da-unicesumar-e-premiado-no-18o-premio-sangue-novo/>

working at the Homicides Police Station. I worked in this highly specialized department twice, 6 years in total.

Parallel to this field experience in Police, I had another career as a professor and researcher in the criminal field. I taught Criminal Law and Criminology, I did a specialization and a master's degree. In 2001, I completed a four-year doctoral research. The thesis was about prejudices. How the prejudices affect the penal system in a general way. One of the chapters is about the police activity. My research is based on street codes, practical language of the streets, known as basic rules or second code. In German it is called *metaregeln*. In Spanish *super reglas*. In Portuguese *metarregras*²¹. Basically, I worked on a concept of stigma (race, religion, gender, poverty, social and ideological behaviour, physical disability, mental illness, etc.). What led me to study prejudices was a statement I read in a sociology book in the sense that the studios have not established the structural conditions of stigmas and their concepts²². I have done an extensive study on the historical origin of the most common prejudices: poverty, race, women, religion, special needs, non-conventional behaviour, etc. I concluded that there was no rational basis for the emerging of stigmas, that is, its emergence is random²³! I noticed that stigma has two aspects, one objective²⁴ that is visible by the naked eye: skin colour, immigrant, religious ritual, woman; and another subjective aspect: the second code²⁵ that I call 'negative' because there is no rational foundation, based on the study of the origin of prejudices. There are 'positive' second codes, that is, which I found rational basis and that are healthy: greeting people, apologizing when recognizing a mistake, complying with the work in an agreement, carrying out day-to-day commitments, respectfully addressing to someone²⁶, etc. As I verified, the objective aspect of stigma (v.g. dark skin) and the subjective aspect (suspected of doing bad things) combined, leads the penal system and the society to suffer from small misfortunes (frustration, fear, trauma, shame), to more reasonable problems (unemployment, underemployment, mistreatment), mistakes (to believe that the person has been or will be dishonest without rational reasons), serious errors (attributing to someone the blame for an act not practiced by him), tragedies (condemning someone for a crime that he had not practiced or, as we will see, not quickly blame someone who is committing serious crimes), as well as catastrophes (see Nazism and World War

²¹ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. São Paulo: Gen-Atlas, 2015, p. 2 and following.

²² GOFFMAN, Erving. **Estigma – notas sobre a manipulação da identidade deteriorada**. 4ª ed. Translated by Márcia Bandeira de Mello Leite Nunes. Rio de Janeiro: Guanabara Koogan S.A., 1988, P. 11. In Goffman's words: "Os estudiosos, entretanto, não fizeram muito esforço para descrever as condições estruturais do estigma, ou mesmo para fornecer uma definição do próprio conceito." (GOFFMAN, E. Op. Cit. p. 11).

²³ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. São Paulo: Gen-Atlas, 2015, p. 2 and following.

²⁴ *Idem*.

²⁵ *Idem*.

²⁶ Zdenek Salzmann exemplifies different ways of addressing someone: "In most cases, speakers of American English address each other by first name, title (or rank) and last name, or kin term. 'Come on over and join us, Bill' is an example of form of address by first name; 'When should I have my next physical examination, Dr. Smith?' or 'Did anyone call while I was gone, Mrs. Brown?' by title and last name; and 'What are we having for dinner, Mother' by kin term". Etc. SALZMANN, Zdenek. *Language, Culture and Society. An Introduction to Linguistic Anthropology*. 2nd. Ed. Boulder: Westview, 1998, p. 196.

II)²⁷. In the concrete cases I have studied, I verified that the idea of negative second code (stigmas) explained serious mistakes that apparently had no rational explanation²⁸. I also studied about the structural origin of the prejudices, which allowed me to formulate a contemporary concept of stigma²⁹.

Here I could include a brief inquiry of the reasons that lead people to delude themselves with negative second codes, the stigmas³⁰. In short words, the stigmas are being instilled in human minds from the earliest childhood. Parents or close adults' comments, successive jokes involving stigma and the stigmatized, mistrusts generated by false claims related to "scientific discoveries", the fear of the unknown, etc. Cultivating stigma generation after generation feeds a strong belief in negative second codes³¹.

A factor that I believe that increases the stigma – as a confirmation of it, is when a stigmatized person commits a felony. For example, if the person has a mental disorder and commits a crime, then the stigma of mental disorder spreads as if all people with similar disorder would commit the same crime. We know that millions of people have the same disorder and they are not dangerous to society. Another example, if an immigrant commits a crime, a connection between the fact of being an immigrant and being "dangerous" is established. Once again, millions of immigrants are serious, but if one stigmatized individual commits a crime, he calls a negative attention to all other stigmatized individuals, increasing the belief of negative second codes or creating new negative second codes³².

Police, penal system and the society in general are involved in stigmas traps and their second codes. The history of serial killers begins here. Intrigued by the mysteries that involve the cases and having the opportunity to work intensively on the homicides field³³, I started studying the most well-known serial killers in specialized literature. One day, after I had studied many cases from around the world, the apple fell from the tree and Bingo! I had a staggering realization. There was a common factor in 100% of the most known serial killers' cases. Something that could explain why the criminal could have been discovered in the second or third homicide, however, the case only became clear after many other victims were

²⁷ William Manchester quotes Winston Churchill's important passage in criticizing Nazi ideology and its inconsistencies: " 'No past services, no proved patriotism, even wounds sustained in war', could prevent atrocities against people 'whose only crime was that their parents had brought them into the world'. Churchill referred sceptics to Mein Kampf, where Jews were described as 'a foul and odious race'. But the inmates of these camps were not all Jewish. Under Hitler 'the slightest criticism' of the Führer and his criminal regime was 'an offence against the State'". MANCHESTER, William. The Last Lion. Alone. Toronto: Little Brown, 1988, p. 151. Sobre o tema também: CONDE, Muñoz Francisco. Edmund Mezger e o Direito Penal de seu Tempo. Estudos sobre o Direito Penal no Nacional-Socialismo. Tradução de Paulo César Busato. Rio de Janeiro: Editora Lumen Juris, 2005, p. 180; CHURCHILL, Winston S. *Memoirs of The Second World War*. Boston: HoughtonMifflin, 1987, p. 3 and following; BAACK, Gita Arian. *The Inheritors. Moving Forward from Generational Trauma*. Berkeley: She Writes Press, 2017, p. 2 and following. BACILA, Carlos Roberto. *The Life of Dale Carnegie and his Philosophy of Success*, San Bernardino (USA): Amazon, 2017, p. 181-182. Etc.

²⁸ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. São Paulo: Gen-Atlas, 2015, p. 2 and following.

²⁹ *Idem*.

³⁰ *Idem*.

³¹ *Idem*.

³² BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 2 and following.

³³ I remember of working in five homicides in one single night, so I visited five different crime sites.

assassinated. Sometimes dozens of victims were sacrificed before one could catch the criminal. I will mention some examples:

In 1971, two young ladies from Liverpool took a ride on an Australian road. The man that gave them the ride, using a knife, committed rape against one of the girls and tried to kill both. They managed to escape but police chose not to believe their story and ignored the case. It's important to mention that the suspect was white, with a constituted family, owner of property and employed³⁴. For this reason, Ivan Milat was not liable. He was only discovered after having made many other victims, who could not testify, because they were assassinated after much torture and suffering³⁵. In 1974, Theodore Bundy was accused by numerous people of having attacked them, but the cases were archived. It was only when three women insistently asserted that he had attacked them, that they began to take the accusations seriously. Bundy was arrested, escaped from prison and killed again. He had a long criminal life, after all he looked good, he had a family, circulated in the universities and when he was in the death row to be executed, he got married with Carol Boone and had a child with her. With a seemingly "normal" social life he was invisible to the investigations. In 1991 two teenagers Sandra and Nicole were talking when they saw a young Asian man running naked and bleeding. They called the police. When police officers arrived, they found as the suspect a white man, blond with bright eyes, who justified that it was a fight between him and his boyfriend. The police even went to the entrance of the man's apartment. The Asian man, who seemed to be sedated, believed the police officers would check what was inside the apartment. But the police understood the case as a conflict between two boyfriends and left. The Asian man was killed the same day by the white man. The name of the murderer was Jeffrey Dahmer. Weeks later, when Tracy Edwards, a 32 year-old white man denounced Dahmer, the police went to the place and found eleven bodies cut to pieces³⁶. That's how Jeffrey Dahmer became known as the American Cannibal and was portrayed in the movie *The Silence of the Lambs*. But Jeffrey was blond, the young man who was killed almost before the eyes of the police was Asian. The witnesses were teenagers³⁷. Note this relationship between the witnesses/victims (stigmatized) and the "normal" suspect. In the Ivan Milat case, the first witnesses and victims were "traveling hitchhiking". Above all, they were women. There is also this correlation between "normal" suspect and "stigmatized" victim. In the case of Green River serial killer, in Seattle, the victims were usually prostitutes, while he was stereotyped as "normal" (white man, with family built, worked, had a home, car, etc.). He had been married for fourteen years and his wife described him as gentle and considerate. There was only one strange thing: there were no rugs at home. Probably because the victims were wrapped in them to be discarded. In the first Green River cases, one of the victims escaped an attempted strangulation. But she was a woman and a "prostitute". Then, police considered it as a disagreement over an unsuccessful sexual program. Only with the advent of DNA was the serial killer found, Gary Leon Ridgway, but he had already left behind more than ninety homicide victims. Others cases are very similar. Described as a hardworking man, good-looking and a homebody, a "normal" man, he even called the police many

³⁴ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 255.

³⁵ CASOY, Ilana. Serial Killer. **Louco ou Cruel?** 7ª ed. São Paulo: Madras, 2004, p. 27 e BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P.253.

³⁶ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 253.

³⁷ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 255.

times confessing to his crimes, but nobody believed him. Police officers would describe him as a good young man³⁸. In the old Soviet Union, Andrei Chicatilo was investigated several times. But Soviet police believed that serial killers were something from capitalism. Chicatilo was married, a teacher of maths and member of the communist party. His actions were never deeply investigated, although there was strong evidence that pointed at him as a serious suspect of some of the cases. Until one day he decided to talk spontaneously. He went to the police and took all the twenty-one bodies of boys, fourteen bodies of girls and eighteen of young women³⁹. It was the same thing with John Wayne Gacy. White, 36 years old, took part in so many charities works in his town that the American first lady Rosalind Carter received him. He was married twice, had children and was a successful businessman. Only he did not expect that a police officer would decide to contradict the tendency of not believing or not having the perception that the “normal” can be a criminal and investigated the many complaints he had gotten away with. The number of bodies found was thirty-three⁴⁰. Because Gacy used to dress up as a clown to please kids, he became known as The Clown. But Canada also had its celebrities. Paul Bernardo’s serial activities were impressive by their invisibility under the legal system. When one of his victims, his own former girlfriend, knocked on the police department doors (and she did so several times), claiming to have been raped by Paul, the case was interpreted as revenge from a former girlfriend because Paul was a handsome man and did not maintain the relationship. Moreover, he was seen as the ideal boyfriend, because he was polite, a leader of the boy scouts, took part in activities in favour of kids, etc. But there are aspects of his lack of incrimination that call for attention from the first cases. In the residential neighbourhood where he lived in Toronto, where several serious crimes were being committed, there were several traces that Paul could be involved with those crimes and that required a deeply serious investigation. The car used was the same, the sketch was of his face, the blood type was the same (at the time it was not usual to do DNA tests); the criminal was described by the victim as a young handsome man, with good teeth, 1,83m tall. His first thirteen crimes were rape. Afterwards, Paul Bernardo started to practice torture and commit homicides, along with his partner Karla Homolka⁴¹.

Therefore, what is the common factor among these serial killers? What is the feature that is present in all serial killers that makes them invisible to the police? What sign, signal or symbol is it that allows them to perpetrate so many crimes, to the point of, in some cases, never being discovered? As I mentioned before, I studied these and so many other cases of serial killers and I described them in chapter 9 of my book⁴². The common factor is that none of these serial killers have a stigma. The negative second codes make so that they are not perceived as possible criminals. They are usually not stigmatized men or women, or, as I called them, they are “normal”, that is to say, they are usually married, with a profession, certain social acknowledgment, having features of a “normal” person. Some of them were even

³⁸ CASOY, Ilana. *Serial Killer*. Op. Cit. P. 150.

³⁹ CASOY, Ilana. *Serial Killer*. Op. Cit. P. 179.

⁴⁰ CASOY, Ilana. *Serial Killer*. Op. Cit. P. 160-161.

⁴¹ BACILA, Carlos Roberto. *Criminología e Estigmas*. 4ª Ed. Op. Cit. P. 254-255 e CASOY, Ilana. *Serial Killer*. Op. Cit. P. 128-129.

⁴² I studied these cases in chapter 9 of the book *Criminología and Stigmas*. BACILA, Carlos Roberto. *Criminología e Estigmas*. 4ª Ed. Op. Cit. P. 239 and following.

described as “beautiful”, like what happened in Canada in the case of Paul Bernardo, or in the United States, in the case of Teddy Bundy. The absence of stigmas acts like some sort of camouflage to the crime. By not having a stigma and, consequently, lacking the stigma’s second codes, which make people extremely wary of negative features that may exist or not in people, investigators looked for a terrible monster, poorly dressed, dirty, poor and ugly in the surroundings of Whitechapel. In this district of London, where women were killed by Jack, the Ripper, police asked for information about the suspect to the respectable gentleman who stood next to the victim’s body and, by doing so, they never found out who Jack, the Ripper, was⁴³. But most recently, maybe after Jack, the Ripper, the most famous serial killer who was never caught, has been the Zodiac. Notorious for the enigmas he sent to the police, the best chance of being located happened when a witness watched him, from the window of a building, as he murdered a taxi driver who had taken him to a park. The witness described him as a white man. The police came quickly and surrounded the area. But the person who operated the police radio described him as a “black man”. And the police found the suspect, but he was white. Then the police officer asked for information from the Zodiac himself and he said he had seen a suspect run along the street. Everyone went away and let the Zodiac go away too without ever being held responsible for his crimes and escaping the funnel which Velloso talks about. Why did the radio operator make such a big mistake by describing the suspect as black? Well, it is known that the police talked to the Zodiac, because he wrote about it afterwards, and he himself did not understand the reason why they had not arrested him⁴⁴.

But this is not just a distant story that happened in the London of the past, or, who knows, in the case of witches judged and convicted in the Middle Ages. Yes, as I had deducted, in the Middle Ages there were also serial killers, but the witches were the ones who were probably convicted for such bizarre crimes⁴⁵. No, this is not a story only in the movies or in the past. The mistake induced by the stigmas is the real case of day-to-day investigations of serial homicides. Yes, the delay in the investigations is not bad will or carelessness of whoever it is, police officers work hard to solve serious cases such as these, but what happens is the incidence of the factor of negative second codes that deviates the focus of investigation, making so that the criminal “cannot be the one” in human minds, because the real killer lacks the typical signs and stereotypes of criminals in the imaginary of the population. The problem with the negative second codes does not occur only in the minds of the police officers, but also in the witnesses’, in the media, neighbours’, prosecutors’, judges’, finally, in society as a whole. This is pure and material reality.

Let us now make a comparison between the recently discovered serial killer of Toronto, Bruce MacArthur, and the cases I have studied. Bruce MacArthur is 66 years old, he worked as landscaper, he is white, took part in religious community activities, his social network profile show a picture of when he acted as Santa Claus, he traveled a lot, participated of a TV show, has two daughters, living a very respectable social life. His acquaintances described him as gentle. One of his gardening clients said he was gentle, solidary, took part in community activities⁴⁶.

⁴³ DOUGLAS, John and OLSHAKER, Mark. **Mentes Criminosas Crimes Assustadores**. 2ª ed. Translated by Octavio Marcondes. Rio de Janeiro: Ediouro, 2002. P. 2 and following.

⁴⁴ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 254.

⁴⁵ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 252.

⁴⁶ The National. <https://www.youtube.com/watch?v=9u6g6G661cM>

He had a stable financial situation, lived in a conventional household in a neighbourhood of considerable good status, that is, status that I call “normal”, and that corresponds with the most difficult cases for the police to investigate.

But let us see if also in the case of Bruce MacArthur the conclusion that he was a serious suspect could have been reached from the beginning. Evidently, if that had happened and he had been held accountable for it, human lives would have been saved. At this point, it is important to highlight that I am not trying to simply judge police work. Definitely not. I know how hard it is to spend nights awake until the sun comes up taking care of what is one of the gravest human conflicts. I was also a police officer and worked with people who dedicated completely to society. The responsibility lies on us all. Maybe a witness went quiet, a prosecutor may have given up the case, a judge did not grant a measure requested by the police, a reporter did not want to follow through with the story, a public employee did not contribute by not checking something, a teacher did not pay attention to a student’s report. From the judge to the prosecutor. From the public server to the citizen who saw something suspect and chose not to do anything. Again, the responsibility lies on us all. When it is about a mistaken social meaning (stigma), the goal is not to find the guilty ones, but to clarify the matter the best way possible to free society from the stigma. In my research about the main stigmas from their emergence, I found that their roots don’t have a rational basis. And even the best minds can be deceived by negative second codes. Going back to the case, in October 2001, Bruce MacArthur was accused of assault with weapon and two other accusations likewise. One of his sentences was to stay away from the gay community, at the time, but the judge in this case decided he shouldn’t be arrested. Is it possible that if the defendant of crimes such as his were a stigmatized one, would he have been free from prison? The nature of this writing does now allow me to go that far, but the fact is that seventeen years later, Bruce MacArthur was arrested for crimes perpetrated throughout years. The gap of seventeen years committing homicides in series is too long for someone to go unsuspected. Note that the second codes act in the whole of society, including in legal decisions. A previous sentence is not a sign that someone is a suspect of having committed other crimes, but is the judge’s decision was to keep Bruce MacArthur away from the gay community, this indicates a serious conflict that, as a matter of fact, involved violence and a weapon. Now, Bruce MacArthur was again in relationships with homosexuals and some of them started to disappear. Is that strong evidence? It seems so. In 2010 a serious disappearance is reported. Another one, of Majeed Kayhan occurred in 2012. Another victim was Soroush Mahmudi (who disappeared in 2015). These people were not abducted. Some evidence was left in the way. Toronto police, it seems, investigated the matter. One of the operations to investigate the disappearances, called HOUSTON (because of the famous phrase “HOUSTON we have a problem”), was initiated, without results.

The problem of the victims’ stigma cannot be disregarded. Media reminded us that the victims were people usually discredited by the criminal justice system, suggesting that maybe they had not called enough attention within the community. According to broadcasted news, three of the victims were immigrants; three belonged to the gay community and were poor. A possible homosexual relationship between MacArthur and Kinsman, one of the victims, was pointed out⁴⁷. Two of the

⁴⁷ The National. <https://www.youtube.com/watch?v=9u6g6G661cM>

victims had no connection with the gay community, but the tendency is to connect them, who knows, to justify, unconsciously, that the victim might have had his share of guilt. One of the victims was, as a matter of fact, homeless⁴⁸. Regarding the victims, once again we find a connection with other cases of “normal” serial killers.

Let us remember the most frequent victims in the cases mentioned. As I described in the cases above, for example, Jeffrey Dahmer (victim’s stigma was “Asian”, “homosexual), Ivan Milat (victim’s stigma was “prostitutes”), Ted Bundy (victim’s stigma was “students”), etc. The single fact that the victim is a woman and the offender was a man is a great barrier for the job. I studied the case of a kidnapping in which the kidnapper was a man and the two victims were women, one of them his former girlfriend. I concluded, based on facts, that the mistakes made by the police, which ended up with one of the women being shot and the other one killed, mostly happened due to second codes derived from the stigma of the woman⁴⁹. The woman is historically a victim of “domestic violence from the partner”⁵⁰. When a stigmatized victim disappears, we have a tendency of believing that he/she is voluntarily getting into trouble and so on.

The second code stigmas induce people within the community to believe that the “normal” cannot be the criminal and if the victim is stigmatized, things get even harder. The criminal must be the one stigmatized, in the collective imaginary, soaked by the stigmas as second codes. At least, this is the tendency in absolutely all relevant cases of serial killers that I have studied.

What can be done then, to avoid errors and the lack of perception of potential suspects in an investigation of serial killers? I believe the solution is simpler that one can imagine. When commenting about the case of a kidnapping that ended up in death in Brazil, I mentioned what I suppose is a coherent way to deal with the problem of negative second codes that act in these cases. I articulated three suggestions that I suppose to be pertinent for the case in discussion, as well as the investigations of serial killers in general. Evidently, they are only suggestions based on my experience, field and theory study combined.

1) It is correct that police officers all over the world look for activity in the streets, features in suspects that indicate criminality⁵¹. Three men wearing huge coats on a hot day, approaching a jewellery shop can be a warning of a theft, but not the fact that they are black or poor, immigrant or members of a certain religious group. Although, studies show the opposite, that is, that characteristics of second code stigmas are traditionally sought for in suspects⁵². In the case of the stigmas

⁴⁸ The National. <https://www.youtube.com/watch?v=9u6g6G661cM>

⁴⁹ This paper was published in several online and physical magazines. For example: https://www.faneesp.edu.br/novo/conteudo/direito/artigo_fantasma.pdf

⁵⁰ About the influence of the second code stigma in the criminal justice system, see, for instance, the excellent work by ALMEIDA, Camila Martins de. *Estigmas como Meta-Regras da Atuação Jurisdicional*. In: *Revista Jurídica Themis*. Edição n. 19 – Curitiba: Centro Acadêmico Hugo Cimas, 2007/2008, p. 141-149. About the woman and the protective Brazilian laws: HERMANN, Leda Maria. **Maria da Penha com Nome de Mulher**. Campinas: Servanda, 2007, p. 13 and following.

⁵¹ Richard Quinney notices well that “The policeman, using a probabilistic model of law enforcement, looks for characteristics in the suspect that may indicate ‘criminal behavior’. Thus, the outward appearance and demeanor of the suspect are most important”. QUINNEY, Richard. **Crime and Justice in Society**. Toronto: Little Brown, 1969, p. 11.

⁵² See, for instance, the study pointed out by QUINNEY: “A study by Piliavin and Briar of how juvenile cases are handled showed that the decision of whether or not to bring a boy to the station and other decisions made at the station ‘were based largely on cues from which the officer inferred the

such as second codes, even when the police officer, judge or prosecutor believes he is acting impartially, the second codes tend to deviate their focus from “normal”, non-stigmatized suspects. The deviation is subtle, but it happens in such a way that it gets in the way of solving serious cases such as the ones in serial killers’ investigations. Therefore, courses could be taught to members of the criminal justice system, such as police officers, prosecutors and judges, etc., in order to bring understanding to how second code stigmas work, even if one “believes” not to have any prejudices. Also, police academies and law courses could include studies on second code stigmas and its influence into making mistakes in investigations and operations, as well as legal decisions and options for the prosecutor, with the goal to increase the chances of solving serious cases, protecting actual and potential victims. The amount of cases is too extensive, as it is shown in the literature regarding serial killers and the case mentioned above⁵³.

2) The lack of stigma of an individual cannot serve him as a shield for criminal investigation, especially of a serious crime. In the face of a stigma, human rights must be respected, granting the same opportunities as for the non-stigmatized ones. The interference of the stigma in the legal system must be minimized.

3) The protection of the victim must always be relevant, even if the victim is stigmatized. In the cases mentioned, investigations should have gone against the tendency that stigmatized individuals are acceptable victims, denying the stigma.

The ironic aspect of discrimination and stigmatization resides in the dissipation of energy that constitutes the behaviour of the aggressor, simply through the stigma, a black man, a homosexual, a woman, a religious person, an immigrant, a poor individual, a dweller of a specific neighbourhood, etc. Meanwhile, someone “normal” can be killing a loved one or stealing public money.

I mentioned Sutherland at the beginning and I would like to get back to him with a quote that has always impressed me, for its strength and truth: “When a society or smaller group develops a unified interest for crimes that affect their fundamental common values, it usually manages to eliminate or at least reduce crime greatly.”⁵⁴ The stigma has nothing to do with crime. A stigma does not have a rational basis. But there is an impressive deviation when it is about the legal system due to stigmas.

Police must have human and material resources to solve crimes of all nature. Evidently, law officers cannot lack this support⁵⁵. On the other hand, one cannot try

youth’s character’. The cues included the youth’s demeanor, group affiliations, age, race, grooming, and dress. Uncooperative youths, members of known delinquent gangs, older boys, Negroes, and youths with well-oiled hair, black jackets, and soiled denims or jeans received the more serious dispositions. Obviously, more than the initial act of the suspect is considered whenever an arrest is made”. QUINNEY, Richard. **Crime and Justice in Society**. Toronto: Little Brown, 1969, p. 11.

⁵³ BACILA, Carlos Roberto. **Criminologia e Estigmas**. 4ª Ed. Op. Cit. P. 2 and following.

⁵⁴ About this topic, see: SANTOS, Celio Jacinto. **Investigação Criminal Especial: Seu Regime no Marco do Estado Democrático de Direito**. Porto Alegre: NuriaFabris, 2013, p. 92 e PEREIRA, Eliomar da Silva. **Teoria da Investigação Criminal. Uma Introdução Jurídico-Científica**. Coimbra: Almedina, 2010, p. 343-344.
SUTHERLAND, Edwin H. **Princípios de Criminologia**. Translated by ASDRUBAL MENDES GONÇALVES. São Paulo: Livraria Martins, 1949, p. 17.

⁵⁵ About this subject, see SANTOS, Celio Jacinto. **Investigação Criminal Especial: Seu Regime no Marco do Estado Democrático de Direito**. Porto Alegre: NuriaFabris, 2013, p. 92 and PEREIRA, Eliomar da Silva. **Teoria da Investigação Criminal. Uma Introdução Jurídico-Científica**. Coimbra: Almedina, 2010, p. 343-344.

to find the solution to all evil in the legal system. On the contrary, the legal system should only act as a last resort, like in cases of murder. Society should find more adequate and less injurious mechanisms to solve conflicts, in mild cases. I would like to be able to explain these points of view in more details and depth than a paper such as this one allows me to. Although, criticism and suggestions are always welcome. I would like to dedicate this writing to Professors João Velloso and Mary Eve from the University of Ottawa, Canada.

3 CONCLUSION

The topic of selectivity in the criminal justice system has been brought up by contemporary Criminology studies. As seen in the teaching of João Velloso, there is a colossal bottlenecking of people in criminal accountability, being so that many escape the criminal justice system, to the detriment of others who are preferred targets. While studying criminal selectivity, I researched stigmas in general, which act as negative second codes, that is, as practical rules that inform mistaken concepts about stigmatized individuals. I consider that a stigma is an objective feature (skin color, poverty, woman, unconventional behavior) that has a derogatory social status. In general, the stigmatized person, due to the negative second codes, receives harder and unfair treatment from society in general and, specially, from the criminal justice system. We applied the concept of stigma in concrete cases and, apparently, there was evidence that coarse mistakes happen due to the influence of second codes derived from stigmas.

After studying the case of Bruce MacArthur, indicted by the police for committing a series of homicides in the city of Toronto, Canada, I observed that the case presents a common factor found in other cases of serial killers, which had great impact for their high numbers of victims. The common factor is that MacArthur is not stigmatized, which makes the action of the criminal justice system extremely more difficult, in view of the usual bottlenecking of stigmatized individuals for criminal accountability. Another coincidence with all the other cases studied is that the victims are stigmatized, which makes it even more difficult for the case to be seen as serious. Indeed, there is great difficulty for the criminal justice system to deal with highly harmful criminals when it is about a suspect who is considered “normal”. The result is that some serial killers could have been identified when they committed their first homicides, although, under the influence of second codes, their cases were dragged for several years.

Finally, I suggested factors that can contribute in such investigations, processes and trials. Recognizing the need to overcome activities that are influenced by stigmas, I suggest the creation of courses in police academies and courses for judges and prosecutors, with the goal of training them to act free of second code stigmas.

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