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Muddy waters: critiquing the historical criminology method in the investigation of the Smiley Face murders theory

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Accepted version

Abstract

As an emerging trans-disciplinary field, the operational use of historical criminology is a largely under-studied area. Examination of the use of archival research in studying cases connected to Gannon and Gilbertson's Smiley Face murders theory indicates that there is clear potential for historical criminology to be used to revisit closed or cold investigations to determine if the official findings of the case are consistent with the evidence. In the case of the Smiley Face murders theory, taking a historical criminology approach has failed to prove the hypothesis of researchers; nevertheless, use of historical research methods has had some success in forcing a re-evaluation of several cases, and should be considered an important tool in future investigations of this nature.

Key Words: historical criminology, murder, research, archival, methodology, policing.

Introduction

Historical criminology is a trans-disciplinary field of study that continues to experience an ongoing evolution as scholars attempt to define its parameters and determine its position on the spectrum of research methodologies. While the specific details of what constitutes the historical criminology approach remains somewhat contested in academia, it is the general consensus that this innovative methodological process involves using traditional historical research practices to analyse criminological issues of the past (Bosworth, 2001). Often, the historical research method is heavily reliant on the use of primary source material derived from archival documentation, however in historical criminology the range of materials analysed can be expanded to include a range of other non-archival sources such as oral histories, the analysis of historical locations and the items found at these sites (Guiney, 2018). Rather than simply using this research product to render a historical portrayal of crime, the fundamental strength of historical criminology is that it applies an understanding of the past to source material in a way that serves to better contextualise the subject at hand. Far from being a looser approach to criminological research, historical criminology takes traditional analysis a step further by assessing events against the standards and conditions of the period. In doing so, historical criminologists are required to go beyond basic causation to consider an extensive set of variable factors that influence behaviours and events. By seeking to position a criminological trend within a broader set of socio-cultural conditions, it is possible for a researcher to render a more multi-faceted understanding of their subject matter that can identify the root causes of deviance by taking a wider historical perspective into consideration (Churchill, 2018). With the imperative to contextualise its subject matter a guiding principle of historical criminology, there is considerable scope for this field of study to be used in ways that go beyond simply cultivating a better understanding of the past.

There is arguably no better example of how historical criminology can be used by criminal justice practitioners than using the research methods associated with this emerging trans-disciplinary field to revisit closed police investigations, especially cases in which there is doubt regarding the outcome of the original inquiries. A criminal investigation is built on a living brief of evidence that is dependent on a range of constantly shifting variables. On opening a case, police rarely have access to all the information necessary to reach a valid conclusion; as such, officers do not have the luxury of scope that is afforded to the historical criminologist who seeks to re-prosecute a case after years of dormancy (Le Pard et al., 2015). This article seeks to highlight the potential opportunities and weaknesses of drawing on historical criminology methods to revisit closed cases with reference to one of the most significant examples of its use in recent times. Since first achieving public prominence in 2008, the Smiley Face murders theory has taken root in the cultural zeitgeist over the last decade largely as a result of the historical criminology research process undertaken by its primary proponents. Driven by a small team of ex-police officers and criminologists, the Smiley Face murders theory purports that a series of drowning deaths of at least 45 young, college-aged men across the U.S. Midwest and Northeast is the responsibility of interconnected cells of killers who drug, kidnap and murder these men before staging their bodies to appear as though they are the victims of accidental drowning; the team responsible for reinvestigating these deaths believe that these murders are marked by the placement of 'smiley face' graffiti near to the sites where the bodies enter into the water (Kaye, 2008).

While this theory has been widely criticised by local law enforcement and the Federal Bureau of Investigation (FBI), the Smiley Face murders theory has used historical research methods to

identify inculpatory evidence indicating that foul play was overlooked in several cases labelled as accidental drownings, and has even led – in a limited way – to some investigations linked to the theory either being reopened or reclassified as a homicide (Egan, 2019). Applying a historical criminology perspective to these cases poses critical questions for practitioners. On one hand, it is clear that engagement with trans-disciplinary research processes has allowed for a re-evaluation of evidence that has in some cases corrected the record as to how a victim died. Alternatively, the use of research by the team driving the Smiley Face murders theory has undoubtedly contributed to perpetuating the belief in a gang of serial killers that has been roundly debunked by experts in law enforcement. While not a perfect case study of historical criminology being used in a practical context, the Smiley Face murders investigation provides an opportunity to better understand the potential that this methodology has when it comes to providing a framework for re-investigating cold cases using traditional historical research techniques. Perhaps more importantly, it focuses on the ways in which Gannon and Gilberton’s investigation did not meet the standards expected of historical criminology research, and as such has failed to provide concrete evidence to support their murder theory. This article will focus on the challenges that the use of historical research can present in such cases, and identify the potential that historical criminology has to provide practical lessons through the re-examination of cold or closed cases.

Methodology

It is the purpose of this article to assess the possibilities offered by historical criminology in a practical setting, and as such it has been determined that the case study model will provide the study’s central organising framework. Case study research is often derided or criticised in the social science disciplines due to the perception that it does not easily provide the empirical

results that allow for theoretical generalisation (Flyvbjerg, 2006). While this criticism is valid in studies where there is an expectation that broader theoretical implications can be made from singular examples, it is not relevant when it comes to the aims of this analysis. In this study, the goal is to conceptualise an existing model of research in a practical context; given that historical criminology remains a highly contested field of study, it is argued that discussing it within the strictly defined parameters of a case study provides the clarity necessary to debate its value as a methodology (Zainal, 2007).

It is important to note that the Smiley Face murders theory is only the *subject* of this article, rather than the *object*: while this topic serves as a focal point for discussions, the chief objective of this research is to assess the opportunities and weaknesses of using the historical criminology research model in a practical context (Wieviorka, 1992). To accomplish this goal it is also important to consistently engage with the methods of historical criminology as a means of analysing its efficacy as an appropriate model to apply in this case. It is the contention of this article that in reinvestigating the closed cases attributed to the purported Smiley Face killers, the proponents of this theory have been reliant on historical research methods — particularly document interpretation of archival material (Gannon & Gilbertson, 2014). For most of the cases investigated, researchers did not have direct access to the bodies of victims to conduct their own scientific examinations, and in many cases the passage of time meant that access to locations or witnesses was severely curtailed (Gannon & Gilbertson, 2014). It is this context that drives the need for a historical criminology approach to the Smiley Face murders, and has been the key matter scrutinised in this study. To assess if the Smiley Face researchers were successful in using this method to prove their claims, it is important that this study revisits the evidence that was available to them and makes some effort to determine whether the conclusions they reached were supported by use of a historical criminology methodology. By

engaging with the same material and research methods used by the original investigators in this case, it is possible to better identify weaknesses in the method that may have contributed to the contested interpretations of the evidence that has come to characterise the Smiley Face murders theory.

Analysing how historical criminology has been used by Gannon and Gilbertson to investigate the Smiley Face murders theory is a central purpose of this article. While, to this point, historical criminology has been primarily characterised as a purely academic discipline, the methodology it uses has clear utility for practitioners when it comes to re-examining cold cases of this nature. Using the historical method, researchers often rely on a breadth of archival material to render these continuities: this material includes – but is not limited to – official correspondence, court records, statistical data and other contemporaneous documents that give insight into how criminal deviance was treated and conceptualised in the past (Robyns, 2001). Situating material in its appropriate socio-historical context has long been a feature of documentary analysis. Just as periodisation is a key element of historical criminology, it is conversely a key failure of Gannon and Gilbertson’s investigation. It is not the aim of this article to argue that the Smiley Face murders investigation is a success, despite several occasions in which police have revisited cases as a result of Gannon and Gilbertson’s inquiries. Indeed, most cases linked to the Smiley Face murders theory have not been reopened or reclassified as homicides as a result of this investigation. The central aim of this article is to use historical criminology to assess Gannon and Gilbertson’s interpretation of the archival material that they have had access to. As the article will show, the Smiley Face murders investigation has not always adopted a methodologically-sound historical criminology approach in these cases, and it is these investigatory deficiencies that has led to flawed

interpretations of evidence and, in turn, the continued propagation of the Smiley Face murders theory.

Literature review

Theoretical understandings of historical criminology

Contemporary criminology is an inherently intersectional field of study which draws on research techniques from a wide array of other disciplines to conduct its analyses and prosecute its theoretical arguments. For a long time, it has been standard practice for criminologists to incorporate methods from a diverse range of disciplines to support their research; while it is common for scholars to refer to the concepts of fields like sociology or forensic science, the use of historical research methods has been far slower to take root as an accepted form of trans-disciplinary practice (Knepper, 2016). A survey conducted by Paul Lawrence in 2012 indicated that in the 18 years since 1994 only 5 per cent of research articles published in the *British Journal of Criminology* used historical sources or methods, further highlighting the relatively slow rate of growth in the historical criminology field. It is Lawrence's view that while criminology is typically seen as a 'rendezvous' discipline where various social science subject areas overlap, the average criminologist rarely consider the importance of the past to their research area; Lawrence does not solely attribute blame for the slow development of historical criminology to traditionalist criminologists, obversely making the assertion that criminal justice historians 'rarely consider anything but the past ... stop[ping] short of making any explicit intervention in contemporary debates, which is often a primary goal for criminological writing' (2012: 314). It is this central element that fundamentally distinguishes conventional histories of crime from historical criminology itself: whereas the historical study of deviance is primarily concerned with explaining the causes and practice of criminal behaviour, historical criminology takes its analysis a step further in determining what implications or lessons can be

derived from antecedent forms of criminality that may be applied in a contemporary context (Bosworth, 2001).

Establishing the existence of continuities is an essential aspect of developing a historical appreciation of crime. Heather Shore claims that doing so 'enable[s] us to begin to understand the nature of the connections and relationships between individuals, groups and organisations involved in criminal activity in the past' (2007: 67). John Scott notes that archival documents 'must be studied as socially situated products' that are analysed to understand their meaning and significance, rather than to be judged against the anachronistic standards of contemporary researchers (1990: 34). The 'meaning and significance' referred to by Scott is not inherently connected to the authenticity and credibility of the document. As Tim May points out, documents 'do not simply reflect, but also construct social reality and versions of events' and, as such, more often than not provide insight into the contemporaneous efforts to construct a historical narrative rather than serving as an entirely accurate rendition of events as they occurred (1997: 164).

In negotiating the emerging parameters of historical criminology, several proponents of the model have drawn on the perspective on documentary analysis presented by scholars like Scott and May, and have pointed to the subjective treatment of source material as a key delineation point between traditional and historical criminological approaches. Monkkonen argues that a traditional criminologist typically considers data as 'transparent' or objective, empirical evidence of patterns and trends; in contrast, there is an acceptance the subjectivity of research at the core of the historical method wherein it is natural to consider archival material as an 'opaque' reflection of the past that is compromised by innumerable variables associated with

the socio-cultural context in which it was produced (2002: 45). Often, these subjective factors are related to the period in which material was created. It may be that different standards of research practice were prevalent in another era that results in data being less reliable, or that there are temporally-oriented socio-cultural factors that must be understood to appreciate what specific drives patterns or trends. May and Monkkonen's points refer to the way that historical documents are often constructed to suit a contemporaneous agenda, but his points on constructionism are also highly relevant to Gannon and Gilbertson's interpretive work on the Smiley Face cases. Gannon and Gilbertson have attracted widespread criticism for purposefully interpreting historical data to suit their existing theory (Drake et al., 2010; Gutsche & Salkin, 2013). Just as historical documents are often imbued with context-specific subtext, so too are the interpretations of researchers who enter into analysis with a pre-existing hypothesis that they seek to prove. This is particularly a problem in cases like those examined by Gannon and Gilbertson, where a historical record that is characterised by inconsistencies allows for greater speculation designed to fill the gaps in the narrative (Fogerty, 1983). Deductive reasoning of this kind is often necessary in historical research, but is speculative and inherently problematic when it comes to using historical criminology in practice.

Undoubtedly there has been a shift in criminology towards greater critical evaluation of source material, to the extent that Monkkonen's criticism of its 'transparent' data analysis has largely been resolved. Even so, recent literature exploring the emergence of historical criminology has identified the absence of contextualisation and subjectivity continues to be a central issue in contemporary criminological studies. Henry Yeomans observes that conventional criminology is 'often guilty of a "presentism" that sees the past neglected, ignored or misunderstood' (2018: 1). He argues for the development of a 'more historically sensitive criminology' where events and trends are situated within an appropriate context by researchers utilising a form of

‘criminological imagination’ (Yeomans, 2018: 1). Recently, a push has developed to use the ‘empirically grounded methodical approaches’ favoured in historical criminology in a practical context, as a means of assessing and improving existing criminal justice models (Guiney, 2018: 13). Thomas Guiney asserts that ‘while systemic archival research is arguably more commonplace within agent-centred accounts of criminal justice change it remains a largely untapped tool of criminology scholarship’ (2018: 13). Guiney notes that historical criminology supports ‘a more constructive dialogue’ between theoretical criminology and archival sources of evidence, and as such has an important role to play in the newly-emerging trajectories in the discipline (2018: 15). Nevertheless, this area of research continues to undergo a process of negotiation, and its utility for practitioners has yet to be determined. For historical criminology to transcend from a purely theoretical endeavour to one that has tangible applications, the tendency towards speculative, hypothesis-driven reasoning by researchers like Gannon and Gilbertson must be first be accounted for. Without doing so researchers will find it difficult to avoid the pitfalls seen in the Smiley Face case, where the potential usefulness of revisiting cases using archival analysis was essentially undermined by the practice of finding historical data to service an existing theory rather than following the archival evidence to its logical conclusion.

Research on the Smiley Face murders theory

As a fringe theory that has been mostly discredited by law enforcement professionals, the Smiley Face murders have received relatively little attention in scholarly literature. A research brief issued by the Center for Homicide Research in 2010 offered an 18-point rebuttal of the theory after studying a database of more than 150 cases of non-recreational drownings in the United States. Primarily, the research brief produced by the Center for Homicide Research

focused on a combination of the tenuous connections between smiley face graffiti and the drowning victims included in the Smiley Face murders theory in conjunction with a discussion of general statistics of drowning deaths as well as prevailing theoretical views on the motivations of serial killers (Drake et al., 2010). While this report is useful in that it directly outlines many of the predominant concerns regarding the Smiley Face murders theory, it serves only as a general rebuttal that does not respond directly to the evidence presented in any singular case. Further, it must be reiterated that it is not the purpose of this article to determine if a Smiley Face gang exists in reality: while the Smiley Face murders theory is the subject of this study, the true object is to assess the use of historical criminology in the investigation of this theory to determine whether or not the model can be used effectively to reinvestigate cold case crimes. While the Center for Homicide Research's report offers areas of weakness in the theory that will be explored in this article, it is more essential for the purposes of this study to suspend disbelief or inherent bias so that a rigorous assessment of the evidence can take place that allows for conclusions to be reached as to the efficacy of the historical criminology method in this case.

It is important that this case study focuses on using the same research product used by the Smiley Face investigators in its analysis – to do otherwise would negate the primary purpose of assessing the researchers' use of historical criminology to reach conclusions in this case. As such, the criminological textbook *Case Studies in Drowning Forensics* (2014) by chief Smiley Face investigators Kevin Gannon and Lee Gilbertson will serve as the foundation for much of this article's discussion of how the historical method has been used in these cases. Rather than presenting as a traditional academic text, this book offers a thorough analysis of 13 drowning deaths (and one near-drowning) that Gannon and Gilbertson connect to the Smiley Face murders theory. In a preface to discussing these case studies, Gannon and Gilbertson verify

that their investigation in the Smiley Face murders theory was a combination of field and archival research; while the authors engaged in field research by visiting the locations in which events occurred and conducted interviews with witnesses who either knew the victims well or were present in the hours before they went missing, the majority of evidence presented in favour of re-opening or re-classifying these cases came in the form of archival analysis of autopsy reports and police case files (2014: 4). Gannon and Gilbertson also outline the seven-step process used to classify potential ‘victims’ which is also generally reliant on archival research: steps one-to-four involve details derived from police files like the discovery of evidence and the results of initial searches, while steps five-to-seven draw heavily from post-mortem examinations of recovered bodies (2014: 6-7). *Case Studies in Drowning Forensics* prosecutes its argument in relation to each of its victims by strictly adhering to this seven-step method, and consistently presenting evidence to support its contentions with reference to archival source material. It is this presentation of source material that allows for an evaluation of the method used by Smiley Face researchers, allowing for an assessment its weaknesses when applied in practice as well as its potential for use as an exploratory model in further cold case investigations.

Discussion

Background to the Smiley Face murders theory

For over more than twenty years, the Smiley Face murders theory has persisted as an urban legend in the folklore of American criminology. The origins of the theory can be traced to the disappearance of 19-year-old Patrick McNeill from New York City on 16 February 1997; after going missing on a night out with friends, McNeill’s body was discovered two months later exhibiting signs of foul play (Drake et al., 2010). Kevin Gannon, the detective assigned to

McNeill's case, emerged as the preeminent advocate of the theory after his retirement from the New York Police Department in 2001. In 2006 Gannon began to collaborate and combine resources with Lee Gilbertson, a St. Cloud State University criminal justice professor and professed 'gang expert' who had independently started to map a series of drownings that he considered suspicious across the American Midwest (Gannon & Gilbertson, 2014). Together, Gannon and Gilbertson's team developed a theory of the case that they claim indicated that an interconnected group of serial killers were active across the northern United States. Using a combination of archival research and their own independent field investigation, Gannon and Gilbertson came to the view that these killers operated by first drugging their targets with a sedative like gamma hydroxybutyrate (GHB), and then holding them captive for an indeterminate period prior to killing their victim and dumping or staging them in a nearby body of water (Egan, 2019). The 'Smiley Face' title is derived from one of the predicates used by Gannon and Gilbertson to identify potential cases connected to their theory, wherein they assert that smiley face graffiti is often located near to where the victim's body would have entered the water as a marker designed to taunt police or investigators (Gallagher, 2019).

By the time that they went public with the theory on national television in 2008, Gannon and Gilbertson had constructed a victimological profile that assisted in identifying more than 45 cases they believed to be linked to this group of killers. All of the suspected victims were college-aged males while most were also white, popular and academically or athletically talented (Gannon & Gilbertson, 2014). In the vast majority of the cases investigated by Gannon and Gilbertson, the deceased demonstrated no signs of physical trauma upon recovery; in some cases, like that of original victim Patrick McNeill, a medical examination indicated that some form of ante-mortem trauma had occurred (Drake et al., 2010). Common to almost all of the cases investigated under the Smiley Face murders theory is the cause and manner of death as

determined in post-mortem examination. In twelve of the thirteen case studies presented in Gannon and Gilbertson's book, initial autopsy results found drowning to be the cause of death; of these twelve victims, only four were listed as accidental with the medical examiner listing the manner of death as 'undetermined' in each of the remaining cases (Gannon & Gilbertson, 2014: 371). Ordinarily, a medical examiner can register the manner of death in a limited number of ways: homicide, accidental, suicide or – in the event that no other explanation can be reached – undetermined. Challenging the results of these autopsies is a central element of Gannon and Gilbertson's research. Based on a scientific analysis of material like these autopsy reports, it is their contention that the majority of these victims were dead before entering the body of water in which they were found; if true, this undermines the theory preferred by police that these cases were accidental drownings.

As noted, Gannon and Gilbertson's Smiley Face murders theory has attracted considerable criticism from members of the criminal justice community. The Center for Homicide Research outlined several reasons that the theory does not have merit, noting that there is no evidence that smiley face graffiti appeared at the same time that victims disappeared, and that none of the smiley faces recorded by investigators match each other in any consistent style (Drake et al., 2010). It also notes that the victimological profile offered by Gannon and Gilbertson is in line with the prevailing law enforcement theory of accidental drowning. The brief claims that 'males are more likely to engage in risky behaviours even when not drinking... [and] many of these drowning victims appear to be drinking to the point of total inebriation' that causes them to take the kind of risks that contribute to an accidental drowning (Drake et al., 2010: 5-6). The Center for Homicide Research also notes that only 0.2 percent of all homicides in the United States are accounted for by drowning, most of which are cases involving victims under eight-years-old — only 117 cases (0.03 percent) involved Gannon and Gilbertson's target

demographic of college students over twenty-one-years-old (Drake et al., 2010). This is also the position expressed by both the FBI and the La Crosse police department, which has been responsible for investigating nine drowning deaths of college-aged men between 1997 and 2010. In a refutation of the theory posted on the La Crosse Medical Examiner's website, the responsibility for the series of deaths in that city was blamed on a serial killer named as 'Al Cohol' (McBride, 2008). While the Smiley Face murders theory has been routinely discredited since 2008, Gannon and Gilbertson's research has achieved a degree of traction in some sectors. Despite initially being designated an accidental drowning, the case of 21-year-old Christopher Jenkins was formally reclassified as a homicide by Minnesota police more than four years after his disappearance after law enforcement identified a suspect in his murder (Condon, 2007). Similarly police in Gary, Indiana recently petitioned to reopen the case of 21-year-old Brian Welzien, who disappeared in Chicago on 1 January 2000 (Hayden, 2019). The decision to reopen the Welzien case after almost 20 years was primarily driven by evidence supplied by Gannon and Gilbertson such as revised autopsy reports and geospatial analysis. In this sense, Gannon and Gilbertson's use of historical criminology methods to reinvestigate cases connected to the Smiley Face murder theory has made a tangible impact in law enforcement fields, albeit on a limited basis thus far.

[Nathan Kapfer: a case study in how Gannon and Gilbertson use historical criminology](#)

To develop a more comprehensive understanding of how Gannon and Gilbertson use historical criminology methods to reinvestigate the purported Smiley Face murders, it is helpful to observe their approach to a singular case that is reflective of the research practices that their team routinely uses as a part of their wider investigation. Nathan Kapfer, a 19-year-old college student studying in La Crosse, Wisconsin, disappeared on 22 February 1998 after a

night out with friends in the city's bar district; Kapfer's body was recovered from a tributary of the Mississippi River on 4 April 1998, with a post-mortem examination determining that he had drowned for undetermined reasons (Gannon & Gilbertson, 2014). Kapfer's case serves as a representative example of many of the other Smiley Face cases explored by Gannon and Gilbertson: his disappearance was the third in a series of at least ten cases in which a young, white college-aged man had gone missing only to be found in the waterways near La Crosse over a period of thirteen years, a set of drownings which attracted the attention of the FBI and contributed significantly to the perception that a set of serial killers may be operating in the region (Gutsche & Salkin, 2013).

The original investigation into Kapfer's disappearance can also be seen to have been conducted at the highest standards available in La Crosse at the time, with much of the investigatory research conducted directly by a senior officer, Lieutenant Mitch Brohmer. As Gannon and Gilbertson note in their analysis of the Kapfer case, Brohmer's direct participation in what was initially a routine missing persons case was 'somewhat irregular... [as] typically, this routine police work would be done by patrol officers' (2014: 255). Brohmer's involvement in the Kapfer case has several implications. For one, it indicates that La Crosse police were highly aware of the developing belief that a serial killer threatened young men in their city and, as such, this case necessitated the attention of more senior officers than it would ordinarily require (LePard et al., 2015). Furthermore, it suggests that the investigatory methodology itself is reflective of the standard of practice in La Crosse at the time, directed as it was by a senior officer who either directly or indirectly oversaw several analogous cases attributed to the Smiley Face killers.

As in each of the cases that Gannon and Gilbertson reinvestigated, their approach to the Kapfer case commenced with the collection of archival material intended to outline the victim's movements in the hours before his disappearance. For the most part, this insight was obtained by requisitioning police casefiles that included both original records of interview with witnesses who had seen Kapfer on the night of 21/22 February 1998, as well as notes on the physical evidence discovered during the investigation itself (Gannon & Gilbertson, 2014). A central piece of evidence identified in the police casefile related to the discovery of several items belonging to Kapfer in Riverside Park, which investigating officers believed indicated the point at which Kapfer entered into the Mississippi River and, ultimately, drowned. The file noted that these possessions, found by a volunteer searcher on 23 February 1998, were placed neatly on the west deck of the La Crosse gift shop. From this discovery, Brohmer determined three possible routes by which Kapfer could have ended up in this river-adjacent area. Each of these three routes required significant physical exertion from Kapfer, including climbing over several high fences or across the roof of the gift shop. Among Kapfer's belongings found on the deck were four citations issued to him at 01:42am on 22 February 1998 by La Crosse police for underage drinking, disorderly conduct and being in a bar under the legal age; police recorded Kapfer's blood alcohol content at this time as 0.077, under the legal limit for driving in Wisconsin (Gannon & Gilbertson, 2014: 257). Again, Gannon and Gilbertson point to Kapfer's relative sobriety as another indicator that he did not accidentally fall into the water while intoxicated as the prevailing police narrative suggests. On this matter, Gannon and Gilbertson found that police likely agreed that Kapfer had not simply fallen into the water: taking into consideration the precise placement of his belongings on the gift shop deck, the effort it would have taken to reach this location and his relative sobriety, it was their view that 'investigators could not, or would not, shake the presumption that Nate [Kapfer] had walked to this location and committed suicide that night' (2014: 259).

Aside from the original police files in the Kapfer investigation, Gannon and Gilbertson relied heavily on revisiting post-mortem medical examination reports to form their theory of the case. Autopsy reports are a common tool used by Gannon and Gilbertson who – in lieu of direct access to a recently recovered body – rely on their findings to pinpoint deficiencies in the police’s accidental drowning hypotheses both in Kapfer’s case and that of many other alleged Smiley Face victims. Kapfer’s post-mortem toxicology report indicated several areas where Gannon and Gilbertson believed the evidence did not support the official cause and manner of death findings. In spite of having registered a 0.077 Blood Alcohol Content (BAC) at 01:42am when tested by La Crosse police, Kapfer’s BAC on recovery was 0.220; as the bars in La Crosse had closed by the time Kapfer was issued his citations, and no other witnesses came forward to admit to consuming alcohol with Kapfer after his interaction with police, Gannon and Gilbertson assert that Kapfer could not have been recovered with a 0.220 BAC unless he was supplied alcohol by a third-party in a clear refutation of the police’s theory of the case. Further, witness reports and video evidence from La Crosse bar Brothers suggests that Kapfer was behaving aggressively and belligerently to staff members in the hours prior to his disappearance. Gannon and Gilbertson felt that Kapfer’s behaviour was not reflective of the 0.077 BAC that was registered shortly after he was ejected from Brothers bar; in the absence of a BAC accounting for Kapfer’s behaviour, Gannon and Gilbertson determined that he was very likely under the influence of another foreign substance at the time of his disappearance (2014: 269). Autopsy results indicated the presence of phenethylamine (PEA) and n-propanol in Kapfer’s system, both substances associated with common date-rape drug GHB (Dinis-Oliveira et al., 2010). While there is scientific evidence that n-propanol is produced in a body after death, the amount of PEA and n-propanol in Kapfer’s system was not reflective of natural

production and indicated that Kapfer had consumed GHB or an analogous substance at some stage prior to death.

Further physical examination suggested other indicators that Kapfer met with foul play. On recovery witnesses noted the presence of insects on Kapfer's body, which was frozen solid as a result of weather conditions at the time. Gannon and Gilbertson suggest that insects are usually not active under temperatures of 50 degrees Fahrenheit; as the temperatures in La Crosse never rose above 46.9 degrees Fahrenheit in the 44 days that Kapfer was missing, and his body was frozen solid while recovered, it is their view that Kapfer was held in a warmer location on land before being deposited in the Mississippi River (Gannon & Gilbertson, 2014: 277). After considering the evidence, Gannon and Gilbertson concluded that the police theory that Kapfer accidentally fell into the river while intoxicated or, alternatively, committed suicide by jumping into the river was unlikely. Instead, they determined that Kapfer was most likely drugged and held for a period before being murdered on land and, eventually, placed in the river to give the impression that he was the victim of an accidental drowning.

Critiques of Gannon and Gilbertson's interpretation of historical evidence

Considerable gaps in the archival record present challenges for the use of historical criminology in the Smiley Face murders investigation. These gaps pose problems that are readily accepted by Gannon and Gilbertson. In the case of Nathan Kapfer, Gannon and Gilbertson raise several concerns over leads that they claim were not followed up adequately by original investigators. These complaints include a delay in obtaining video surveillance footage of The Library, a bar that Kapfer visited prior to being ejected from Brothers and where Gannon and Gilbertson claim it was most likely he was drugged; by the time police sought out CCTV footage from

this venue, it was no longer available as the tapes had been routinely overwritten by staff (Gannon & Gilbertson, 2014: 260). Gannon and Gilbertson also highlight a lack of follow-up on the indications from search-and-rescue dog that Kapfer had travelled from Brothers through the closed bar Shooter's after which his scent was directly traced to his belongings that were found on the deck of the La Crosse gift shop (2014: 265); they claim this was particularly noteworthy as the next La Crosse victim, Jeffrey Geesey, also had his scent tracked through Shooter's before heading directly for the water's edge (Gannon & Gilbertson, 2014: 289). The frustration resulting from the absence of follow-up investigation on these leads is key to the failure of historical criminology to provide concrete answers in these cases. Historical criminology can draw on a range of sources to reach its conclusions, however in cases where access to oral histories is limited and there are few other opportunities to collect primary evidence, researchers using this approach are often reliant on the archival record to form the basis of their case. In instances where the archival record is also deficient, the conclusions that can be reached using these methods are inherently compromised (Glassford, 2018). In this case, the reluctance of the La Crosse police to pursue the information derived from the search-and-rescue dogs – or, at least, their failure to document the results – creates a considerable gap in the record that could link Kapfer's case to Geesey's and, thereby, justify some aspects of Gannon and Gilbertson's theory. The absence of evidence is not, however, evidence in itself: while the possibility remains that Kapfer was drugged at The Library, or transported through Shooter's bar just as Geesey just over a year later, there is no archival evidence to either support or refute Gannon and Gilbertson's hypothesis and, thus, the Smiley Face murders theory remains unproven.

Gannon and Gilbertson claim that their investigation into the Smiley Face murders theory has taken two primary routes: conventional archival research and direct fieldwork, which has

involved other methods associated with historical criminology such as the collection of witness testimony (oral history) and site analysis (2014: 4). Just as the historical record contains gaps of information that cannot be resolved, however, so too does the process of conducting primary research into historical events. For practitioners who are not sworn law enforcement officers, primary fieldwork is fraught with ethical concerns. For example, in Minnesota – a key area of interest in the Smiley Face murders theory – it is illegal to investigate potential crimes without appropriate licensure (State of Minnesota, 2018); in other states, various laws to do with obstruction of justice may apply depending on the actions of researchers, and the status of the investigation. Beyond this, one of the foremost deficiencies of direct fieldwork is the impact that the passage of time has on the recall of potential witnesses. In many Smiley Face cases, Gannon and Gilbertson build their argument based on anecdotal evidence supplied by individuals who were personally involved with the victim, or in the search effort. Usually, this information is treated as reliable and taken on face-value to be an accurate rendering of events. Uncritically accepting evidence as accurate goes against the guiding principles of historical source analysis, as well as the conventional wisdom in policing. As La Crosse police made clear in their public statements about the drownings that occurred in their jurisdiction, each of the disappearances took place in an alcohol-rich environment. On this, Gannon and Gilbertson go to extreme lengths to use empirical data to justify their contentions — and, in doing so, showcase yet again the way that historical data can be purposefully interpreted to satisfy an existing hypothesis. To counter the finding of La Crosse police that the drownings were alcohol-related, Gannon and Gilbertson present statistical information on alcohol consumption in the city. Their figures derive from the admissions data of local detoxification units, with Gannon and Gilbertson finding that college-aged students admitted to these facilities between 2000 and 2004 made up 15 percent of total admissions (n=684). Because this number is lower than the proportion of college-aged students in the city (27.8 percent), Gannon and Gilbertson

asserted that alcohol-related drownings should have been more evenly dispersed across the La Crosse population rather than solely occurring in cases involving young, white college-aged men (Gannon & Gilbertson, 2014).

As the Center for Homicide Research and other opponents of the theory note, this is an interpretation of the data that is designed to support the Smiley Face murders theory, but is not adequately tied to broader contextual issues. For one, this interpretation does not critically analyse the data, or acknowledge that the figures of admission to detoxification units may not accurately represent the true number of alcohol-affected young people in La Crosse. Another criticism is that it does not account for the inherently distinct ways that individuals act while intoxicated — young men are disproportionately more likely to engage in risk-taking behaviour while drunk, which in turn could account for the higher rate of college-aged men included in the Smiley Face murders case. Not only was intoxication presented as a contributing factor in the drownings themselves, it also had a considerable impact on the ability of witnesses to recall the events leading up to each death. Even without taking inebriation into account, it is without question that information becomes increasingly less reliable as time passes, causing an individual to often misremember critical aspects of an event (Tucker, 2018). When Gannon and Gilbertson uncritically use witness statements to support their contentions, their investigation fails to take into consideration the impact of alcohol — one of the most significant contextual factors relevant in almost every single Smiley Face-linked death. In doing so, they make a fundamental error by misrepresenting compromised information as fact which, in turn, inherently undermines the legitimacy of their investigation.

In several of the cases examined by Gannon and Gilbertson, the recall of witnesses is central to the belief that the victim met with foul play. Recall was certainly a factor in the case of Tommy Booth, a 24-year-old man found dead in a creek in Pennsylvania in early 2008. While Gannon and Gilbertson also provide scientific and archival evidence to support their contention that Booth was a Smiley Face murder victim, a significant aspect of their theory comes from evidence provided by a member of the search party who claimed to have searched the area where Booth's body was found the day prior and found nothing (Gannon & Gilbertson, 2014: 242). Rather than postulating that this source may be misremembering the location that he searched, or was otherwise unreliable, Gannon and Gilbertson reach the conclusion that Booth's body must have been placed in this location after the search had taken place. Again, this interpretation of the evidence is counterintuitive to any accepted notions of critical source analysis (Roberts, 2013). Gannon and Gilbertson's tendency to take primary sources at their word consistently complicates their understanding of the narrative in these cases and, as in the Booth case, contributed to perpetuating their much-criticised belief in a pattern of Smiley Face serial murders.

[A problematic historical record: medical reports and the Smiley Face victims](#)

Gaps in the available evidence can be observed throughout the relevant police casefiles, but it is the gaps in the post-mortem medical reports that are potentially more detrimental to Gannon and Gilbertson's argument. Although the information that can be discerned about a missing victim's last movements from police casefiles is no doubt crucial, it is usually the objective medical evidence supplied by post-mortem examination that most contributes to the hypothesis that the alleged Smiley Face victims were murdered. Scientific data regarding the timelines indicated by a body's lividity or progress through rigor mortis provide perhaps the most

convincing evidence that the official theory of accidental drowning is inaccurate. On examination, many of the potential victims identified by Gannon and Gilbertson show signs of set posterior lividity indicating that they laid in a prone position on their back for a significant time immediately after death (Prahlow & Byard, 2012). Gannon and Gilbertson argue that this suggests they did not immediately enter the water, as the typical drowning victim would demonstrate fixed anterior lividity; this is supported by the fact that a number of alleged victims were still experiencing rigor mortis at the time of autopsy, a process that ordinarily has completely finished between 36 and 72 hours post-mortem (Prahlow & Byard, 2012); in cases like Kapfer, where the victim was missing for significantly longer than a three-day period, the presence of rigor mortis was considered to be indicative that they were not dead for the entire period that they were missing (Gannon & Gilbertson, 2014).

Given the scientific nature of these findings, the results of these examinations provide persuasive evidence of Gannon and Gilbertson's theory. Again, however, gaps and inconsistencies in post-mortem reports from examiner-to-examiner and region-to-region prevent a coherent perspective on the interconnectivity of these cases to be formed. There is no consistent guidelines for medical examiners to adhere to when conducting a post-mortem examination. While some examiners may refer to the subject's ocular state, for example, others may ignore this aspect entirely (Gannon & Gilbertson, 2014: 345). With no consistency and significant gaps in the post-mortem analyses that form the basis of Gannon and Gilbertson's historical study, it is impossible to identify if there were enough factors in common to indicate that the cases are linked. Again, as with police casefiles, the absence of evidence prevents Gannon and Gilbertson from forming a cohesive theory that is comprehensively validated by the existence of scientific evidence that connects the alleged Smiley Face cases.

Suggestions that alleged Smiley Face victims were covertly dosed with GHB by their killers to make them more compliant is a major element in Gannon and Gilbertson's theory of the case. Repeatedly in their analysis, Gannon and Gilbertson make the assertion that GHB is 'a date rape drug' that is used to predatorily incapacitate a victim, and is not usually ingested by an individual for recreational purposes (2014: 323). This is, of course, not the case: GHB is also used as a party drug, with the peak of its popularity falling in the late 1990s and early 2000s when many of the alleged Smiley Face victims died (Dillon & Degenhardt, 2001). Gannon and Gilbertson, thus, operate under a false assumption in repeatedly arguing that there was no legitimate reason for GHB to be present in the system of their subjects unless they were predatorily drugged. In doing so, they fall victim to another danger of historical criminology: the failure to accurately engage with the periodical context of a case (Goodson & Rudd, 2016). By constructing their theory on an anachronistic understanding of what GHB was used for, Gannon and Gilbertson formed a view that the presence of GHB was evidence of foul play. If they had endeavoured to cultivate a more thorough understanding of the party drug culture of the 1990s and early 2000s, it is possible that this position would have been revised to consider the possibility that the alleged Smiley Face victims ingested GHB of their own free will.

Further, Gannon and Gilbertson routinely use the lack of evidence of GHB in a victim's system as evidence to further support their theory. If a victim is found with no GHB in their system, Gannon and Gilbertson argue that the short half-life of GHB – which leaves the system in only a few hours – means that investigators would not expect to find the substance in their system; they also note that GHB is not usually tested for on a routine toxicology screening, and argue that this means in many cases GHB may have been present and not detected (Gannon &

Gilbertson, 2014: 351). This line of argument is reflective of the overarching habit of Gannon and Gilbertson to justify a lack of evidence by referring to the failure of the original investigators to thoroughly explore all potential avenues of the case. As with previous examples in which there existed gaps in the archival material, the absence of a test for GHB does not mean that deceased subjects were any more or less likely to have it in their system. Instead, this gap in the archival record leaves only room for conjecture and supposition. It allows Gannon and Gilbertson to continue arguing that GHB *could* be a common factor in the Smiley Face cases, but does not take the extra step of proving that it *was* a common factor in each case. Gannon and Gilbertson's treatment of the lack of inconsistency in post-mortem GHB findings is a reflection of the single biggest problem in their use of the historical method: instead of being guided by documentary evidence it appears that their investigation relies on gaps in the archival record that provide room for their conjecture, rather than constructing a hypothesis based on a re-analysis of the evidence proving that their theory of the case is correct.

Conclusions and Recommendations

In the investigation of the Smiley Face murders theory, a significant gap exists between the use of historical research methods and an actual adherence to the principles of said research. Gannon and Gilbertson have been able to successfully use the trans-disciplinary approach of historical criminology to examine a pattern of closed cases that share a set of broad similarities in terms of context and victimological profile. In revisiting these cases, Gannon and Gilbertson relied on extensive engagement with archival sources like police casefiles and medical examiners reports (2014: 4). Although their interpretation of this material is influenced by a clear researcher bias and is often questionable, their investigation shows that the processes of historical criminology have the clear potential for application in practical contexts. The fact

that Gannon and Gilbertson have failed to prove the existence of a set of Smiley Face serial killers does not and should not detract from the important results that they have achieved in re-examining these cases: as noted, their agitation in the Christopher Jenkins case resulted in its reclassification as a homicide while their research in other cases like that of Brian Welzien has led police to officially re-open otherwise closed investigations (Condon, 2007; Hayden, 2019). Even in cases where there has been less formal action, Gannon and Gilbertson have used archival research to prove that enough inconsistencies exist to warrant a serious re-evaluation of the accidental drowning verdict that was offered up in many of the cases included in their study. Their work highlights the power that historical criminology has to challenge established narratives of a case, and force law enforcement to review their pre-existing assumptions to determine whether Gannon and Gilbertson's claims have merit.

Gannon and Gilbertson's investigation has had a significant impact in the re-evaluation of individual cases, yet it is its wider implications for criminological studies that are even more important on a macro-level. Historical criminology is not solely about recounting true crime stories: instead, it is concerned with deriving lessons from the past by developing a clearer historical view on criminological subjects (Bosworth, 2001). The use of historical criminology to identify and address shortcomings in criminal justice practices has become an increasingly essential element in the exploration of historic cases. In the United Kingdom, the Hillsborough Independent Panel used extensive documentary research to conduct a review of the 1989 Hillsborough Stadium disaster which resulted in 96 deaths (Hillsborough Independent Panel, 2012). In doing so, the panel was able to make recommendations for re-investigation that led to these deaths being re-categorised from accidental to the result of gross negligence; six people were charged in 2017 as a result of this re-investigation, more than 28 years after the incident. Methods associated with historical criminology has also been increasingly used to prosecute

cases of historic child sexual abuse, particularly in the wake of the 2012 revelations relating to the offences that were alleged to have been committed by entertainer Jimmy Savile (Greer & McLaughlin, 2015). As with the Smiley Face cases that have been reopened as a result of Gannon and Gilbertson's inquiries, these examples showcase the real impact that historical criminology has had in providing justice even after the considerable passage of time.

As has been noted repeatedly, it is not the contention of this article that Gannon and Gilbertson's investigation constitutes a perfect case study of historical criminology in action. It has had limited success in precipitating the reopening or reclassification of drowning cases connected to the Smiley Face murders theory, and the interpretations of evidence they arrive at in many instances are unsustainable due to significant methodological problems. Nevertheless, it is possible to identify recommendations that can be made based on Gannon and Gilbertson's flawed investigation to improve the criminal justice system's approach to cold cases. For example, the absence of a consistent post-mortem profile of victims is a central shortcoming in Gannon and Gilbertson's research. The fact that some victims were tested for the presence of GHB and others were not, or that some were examined for ligature marks while others were not, means that it is impossible for Gannon and Gilbertson to draw a clear pathological connection between the alleged victims of the Smiley Face gang. While this is a failure in terms of proving their hypothesis, it is also evidence of the need for a more standardised cross-jurisdictional approach to post-mortem examinations across the United States. In a preface to their discussion of the Smiley Face case studies, Gannon and Gilbertson note there is no checklist for coroners and forensic pathologists to adhere to when examining a body, and 'having a good autopsy depends on the pathologist you have' (2014: xvii). Regardless of whether Gannon and Gilbertson's serial murder theory was correct, the

observations they make about the coronial system is justifiable and clearly grounded in their experiences conducting historical criminology research.

Critics claim that Gannon and Gilbertson selectively use the results of this archival research to promote a hypothesis that has been disproven by law enforcement on a number of occasions since the late 1990s. It is not the purpose of this article to pass judgement on the Smiley Face murders theory, but it is important to note that Gannon and Gilbertson's research is plagued by archival gaps that make it near impossible to draw a definitive conclusion. The theory of the case they present is, thus, almost entirely speculative and driven by supposition as much as it is by actual evidence. Nevertheless, the example they provide of historical criminology in practice should not be ignored by practitioners. In several cases, their archival research has resulted in police deciding to revisit closed cases in an attempt to account for a litany of inconsistencies. While their success has been limited to one or two cases of the hundreds that have been connected to the Smiley Face murders theory, Gannon and Gilbertson's investigation has at the very least forced law enforcement to question their assumptions on these cases, and take more consideration in future cases that otherwise could have been similarly dismissed as accidental alcohol-involved drownings. The limited outcomes of Gannon and Gilbertson's research highlight that historical criminology is not foolproof, and is often characterised by gaps in the archival record that make it impossible to reach definitive conclusions. The fact that Gannon and Gilbertson have attempted to construct a definitive theory connecting these drownings despite the gaps in the historical record is not grounded in evidence, and undermines their work using historical methods to re-examine cold case deaths. Had they acknowledged the deficiencies in the historical record and limited their findings to matters that are supported by historical evidence, it is likely that they could have avoided the accusations of conspiratorialism that has plagued their investigations since the Smiley Face murders theory

became public knowledge. Nevertheless, unfounded case theories aside, Gannon and Gilbertson's work shows the potential for historical criminology when applied correctly in practical contexts, both as means to reframe the narratives of closed or cold cases and in providing lessons that allow for the improvement of the criminal justice system that would benefit future victims.

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