

Multilingual Determinants as Forensic tool in Identifying Persons of Interest in the Criminal Justice System in the Philippines

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Abstract

Primarily, this paper shall present the efficacy of forensic linguistic tools in establishing the identity of the person of interest by the unique multicultural determinants in the commission of the crime. Secondly, this will also highlight the practical description and analysis of forensic linguistics, more particularly on linguistic dialectology, which refers to the study of dialects in a methodological manner based on anthropological information. It shall elaborate on authentic case crime transcripts in assessing the tone, diction, and other linguistic features unique in a multicultural setting more particularly in assessing threat in establishing leads in identifying persons of interest by law enforcements. Lastly, the synthesis of the unique multicultural construct that the court may consider to be a determining evidence of a crime. In the Philippine context, the term Person of interest is commonly used by law enforcement to identify someone involved in a criminal investigation that has not been arrested or formally accused of a crime. It is used as equivalent for suspect. In a wider perspective, forensic linguistics covers these persons of interest by establishing proven facts as required by law in presenting compelling evidence.

Keywords: Criminal justice system • Forensic linguistic • Crime transcripts

Introduction

Generally, the practice of presenting local or native nuances as evidence in identifying POIs is not as popular in a developing countries like in the Philippines. As compared to other progressive countries which recognizes the practice of Forensic Linguistics—the study of language in determining crimes which they give premium in ascertaining and solving highly staged crimes. The criminal justice system in the Philippines is not akin in appreciating forensic tools that carries linguistic features and other cultural nuances as material facts in proving a crime. It is somehow downplayed and set aside as immaterial and relates only in the ultimate facts, which does not include cultural identification. In most cases, if the crime has been staged or the investigators are left with no trace to identify the suspect, justice is impede and the former is considered at large. In this lens, the criminal justice system do so requires sufficient and hard evidence, and lacking to present as such would result in failure to prosecute the crime. Thus, this paper shall present indubitable proof in the form of narratives to underscore the importance of multilingual analysis in establishing lead in the investigation level and be admissible evidence to indict the suspect before the court of law.

As part of the rules of evidence in the lower court, the filing of judicial affidavit—the new version of affidavit being sworn into before the court in the form of question and answer descriptive narration of facts. This affidavit is presented in the court and served as the basis of information for trial.

In most cases, failure to prosecute are cases involving heinous crimes. That is why in the absence of a compelling evidence, such as the perpetrator cannot be identified or establish positive identification or no authentic or hard

evidence to show motive or any relationship that might establish connection appurtenant to the crime, this will render the case on a dead end. The Rules of Court is clear in this regard that:

To convict an accused, it is not sufficient for the prosecution to present a positive identification by a witness during trial due to the frailty of human memory. It must also show that the identified person matches the original description made by that witness when initially reporting the crime.

Methodology Adopted

In the United States, to obtain a conviction at trial proceedings there are elements of a crime that the prosecution should prove beyond reasonable doubt. These specific elements are: (1) that a crime has actually occurred (actus reus), (2) that the accused intended the crime to happen (mens rea) and (3) and concurrence of the two meaning there is a timely relationship between the first two factors.

In the Philippine criminal justice system, if there are no sufficient grounds, the prosecutor will dismiss the case. As such, the criminal complaint shall be dropped and shall not longer be filed in court. Generally, sufficient grounds are based on reasonable and probable grounds usually carried out in law enforcement level, on which investigations are employed to effect arrest and proceed in the filing of a case. There are, however, certain legal standards in establishing levels of sufficient grounds; as Peter J. Dostal, 2012, he described below how reasonable and probable grounds can be established:

Credibility-based standard

Reasonable and probable grounds is the “the point where credibly-based probability replaces suspicion” [1]. It is the reasonable belief that “an event not unlikely to occur for reasons that rise above mere suspicion” [2]. “Reasonableness” concerns the legitimate expectations in the existence of certain facts. It can then be said that the belief in certain facts can be “reasonable” without being “probable” [3]. Credibility-based probability involves “a practical, non-technical, and common-sense assessment of the totality of the circumstances” [4].

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Totality of circumstances

The "totality of the circumstances" must be considered in the assessment of grounds. The purpose of emphasizing the "totality of the circumstances" is to "avoid concentrating on individual pieces of evidence" [5]. Accordingly, the considerations of the evidence cannot be "piecemeal" [6]. Totality requires that the officer consider "all incriminating and exonerating information", but may disregard unreliable evidence [7].

The officer must consider context including timing involved, events leading formation of grounds, and the dynamics at play [8]. Reasonable grounds need not be based on first-hand knowledge. The factors of consideration must be "flexible". Courts should not put one factor "to the status of an essential prerequisite" to establish grounds [9].

Furthermore, if the prosecutor finds probable cause, based on reliance of probability, he will then issue a resolution spelling out the reasons for such finding. The prosecutor will correspondingly file information in court, with the recommended bail. If the judge then so deem in the pertinent court finds sufficient grounds, then it shall issue a warrant of arrest. Except for certain crimes punishable by reclusion perpetua, when evidence of guilt is strong, the accused may post bail.

It must be emphasized also that "courts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions." The presumptions of the prosecution's witnesses for the Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction. Thus, in the case of *Guilbemer Franco vs. people of the Philippines*:

The court emphasized that proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence. To sustain a conviction based on circumstantial evidence, Section 4, Rule 133 of the Rules of Court provides that the following requisites must concur: (1) there must be more than one circumstance to convict; (2) the facts on which the inference of guilt is based must be proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. With respect to the third requisite, it is essential that the circumstantial evidence presented must constitute an unbroken chain, which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person.

The facts and circumstances proven by the prosecution, taken together, are not sufficient to justify the unequivocal conclusion that Franco feloniously took Nakamoto's cell phone. No other convincing evidence was presented by the prosecution that would link him to the theft. The fact Franco took a cell phone from the altar does not necessarily point to the conclusion that it was Nakamoto's cell phone that he took. In the appreciation of circumstantial evidence, the rule is that the circumstances must be proved, and not they presumed. The circumstantial evidence must exclude the possibility that some other person has committed the offense charged.

This particular case highlights how circumstantial evidence is given weight in the criminal prosecution. Certain cases that gives merit to circumstantial evidence is extinguished when it warrants a single interpretation and it has to be consistent in the commission of a crime like those that of the murder case that could not locate any suspect and/or material facts that could lead to the positive identification of the suspect. In this case, another layer of investigation wants by taking into account the statements made by witnesses on what they have seen or heard in the crime or anything that will have any bearing in proving the identity of the suspect. At this stage, the investigators shall extract multitude of statements and trimming it down to the most credible account and interviews made to get a clearer picture in order to establish context of the crime. Basically, these statements were written in vernacular and the interviews were carried out in the same language.

At this stage of extraction by the investigator, the criminal investigation has already been reduced in a linguistic inquiry. It is the stage which ascertains and provides a stringent analysis of language used in the commission of the crime. This analysis somehow provides a vital lead by deducing the language utterances that has been used for the law enforcers, criminal lawyers, prosecutors, and judges in connecting piece by piece of the puzzles in identifying the author of the crime. The employment of textual and vocal analysis including any cultural aspect peculiar to the commission of the crime shall be indispensable in giving them a hint on what cultural sensibilities and practices the culprit of the crime is capable of.

This is what Richard Nordquist, emphasizes on the applications of forensic linguistics which include voice identification, interpretation of expressed meaning in laws and legal writings, analysis of discourse in legal settings, interpretation of intended meaning in oral and written statements (e.g., confessions), authorship identification, the language of the law (e.g., plain language), analysis of courtroom language used by trial participants (i.e., judges, lawyers, and witnesses), trademark laws and interpretation and translation when more than one language must be used in a legal context." The coverage of FL analysis as pointed out by Richard Nordquist are highly dependent on how it is being appreciated by the investigators and prevailing rules of court and the presentation of evidence are being accepted in the courts of law. The word "interpretation of intended meaning in oral and written statements" as one of the functions of FL, which is a legal construct for the higher tribunals are contentious. However, the Supreme Court are not trier of facts and if the lower court did so appreciated the FL evidence in shedding light in the case, then, this will not impede the presentation of evidence to prosecute the crime.

In fine, a lot of linguistic analysis is crucial in ascertaining written documents and or specimens. These include materials written basically in all mediums, including cultural language used in regional, national, and bilingual-dialectal forms that are reduced to the form of being recognized as a transcript. The element of this transcript should include criminal messages, malicious, premeditated, planned out messages or plans which are about to be carried out or has already been done in the commission or perpetration of a crime like in cases of terrorist threat, suicide, kidnapping, blackmailing, and among others.

Vital to this is the determination of these linguistic features is the ability of the FL expert on translation of legal documents from one language into another. This will guide the examination of text material to answer the predicaments of the crime on who may or may not have been the author/writer of a transcript in the commission of a crime. Thus, it is important to specify various forms and approaches in FL that can be utilized in order to pinpoint a lead. Also, significant in finding a lead can also by way of deduction from the spoken words that has been heard uttered and has been reflected in the transcript of witnesses. These are essential pieces of evidences that should be accounted for in the investigation process. The language or dialect used by offenders or victims in a crime can be meticulously be considered as an important material fact to be the best evidence of an FL expert even in the absence of circumstantial evidence presented in the case. In this analysis, the FL's job is not just to hear the nuances but also to understand the manner how it was spoken and which cultural behaviourism this can be best correlated.

Furthermore, fundamental in the analysis of documents on the written form are the linguistic features on how it was written, such as spelling (orthography), sentence construction (syntax), word-choice, and punctuations. By comparing the spoken form, which has the element of examining the accent, dialect, pronunciation, tone of voice, speed and rhythm of speech—a substantial evidence can be made to ascertain the identity of the person of interest be more than accurate but acceptable/triable in the court.

There are linguistic tools uniquely ascribed for a certain culture. In the Philippines, variants of syntax, orthography, cultural dogmas, traditions, and psychological sphere of a certain culture, and the economic layout they belong to the social strata are seen as compelling facts that can be included in the quantum of evidence in the court of law. According to Fr. Pierre de Charentenay, S.J., PhD, former president of the Jesuit Universities in Paris,

France who is a known Political Science Professor and a renowned in France and Europe for its social analysis that:

Countries can be more or less multicultural. The US is multicultural, but with a common basis, and common values. All the immigrants in the States share the values of freedom, personal initiative, and the self-made man ideal, even if they are Irish, Polish, Mexican or Korean. But countries like Denmark or France are not multicultural. They resist and they defend their identity very strongly, their language, their laws. Switzerland is multicultural, but with Europeans only; they reject other foreigners, such as the Asians. In Southeast Asia, multiculturalism is everywhere, since those nations have been made of various populations under one government. Later on, there have been many layers of migration along the centuries, with the coming of Islam in many countries in the 14th century, the presence of colonial power, the arrival of Chinese people, and today Koreans in the Philippines for instance.

Local migration

It is a fact that Philippines exist as a multicultural country and highly regarded as multilingual. The issue of migration from one Region to another Region due to economic reasons to alleviate poverty is seen as one economic strategy for survival. This is seen as developed cities are potential grounds in ensuring a decent way of living than on the outskirts of the region. This mentality besets employers to recalibrate aspects of qualification standards of employment as safeguards. Thus, the labour standards has set-up at least a sub-professional level or requires secondary education to work as fast food crew or a construction worker. Such standards that the state mandates is to maintain quality personnel. Consequently, majority of these regional migrants have not attained basic education due to lack of resources. Such miseducation and the necessity to survive have been seen in resorting to various commissions of crimes.

As I conduct this research by way of visiting various local police precincts in Manila, I have scrutinized the blotter logs on their front desk and found domestic complaints are registered belonging to those that of who have no stable jobs and are regional migrants. Generally, all narratives written in the logbook are highly identifiable on which regional roots they came from by way of their statement of narratives.

This however is vital in an investigation process especially in establishing lead by using word usage that directly relates to the locale of the suspect. Furthermore, this information helps the law enforcers to inquire on "Baranggay" (village) who among their constituents are migrants and establishes a probable ground to the identity of the persons of interest. There are numerous crimes that FL can be useful and relevant in the Philippine Criminal Justice System but this article zeroed-in to threat of committing a crime.

Threat as defined under the revised penal code of the Philippines

Threat is regarded under the Revised Penal Code of the Philippines as crimes against security because of the disturbance of peace of mind of a person. Threats are declarations of an intention to inflict a future wrong upon the person, honor or property of another or the latter's family. It is done thru acts or words that could be so efficacious as to amount to moral pressure and that in the process it produces fear, or mental disturbance. Under Article 282 of the Revised Penal Code—Grave threats are act threatened to be done is a crime e.g. to kill, to burn or destroy property, to box or to inflict injuries. It could either be Conditional— the accused makes a demand so that he will not do what he threatened, such as a demand for money or another condition which may not be unlawful. Example "I will stone your car if you will fail me". Second is the Unconditional—where there is simply a declaration to do wrong or harm amounting to a crime. Example: "I am tired of looking at your face. I might as well kill you". Thirdly, if the threat was made in the heat of anger and the accused did not persist. There is Light Threats—if in example in a heated quarrel the accused uttered: "Uubusin ko kayong lahat!" but did not do anything more. If he however gets a weapon and moves towards his opponent, the crime is grave threats. Light Threats may also either be an act to be done that does not amount to a crime, but it disturbs another. This may be subject to a condition or not. (Article 283 RPC) like:

(a). "Ibabagsak kita kung di mo ko magagawan ng paraang makipag- date sa Ate mo."

(I shall fail you if you will ask your older sister to have a date with me.)

(b). "Sasabihin ko sa Tatay mo na nagka-cutting classes ka kapag di mo ko pinakopya."

(I shall tell your father that you cut classes if you will not make me copy your work.)

There are also other Light Threats under Article 285 specifically those threats that can be accounted with textual evidence like written blackmailing which constitute a crime when the doing of a wrong which does not constitute a crime (Light threat) is subject to a demand for money or other valuable considerations. Examples:

(a) "Isusumbong ko ang pangongopya mo sa Guro kundi mo babayaran ang renta ng bahay ko."

(I shall tell your teacher that you have copied your work, if you will not pay your debt.)

(b) "Di ko sasabihin na may iba kang boyfriend basta ibigay mo sa'kin ang Prada bag mo."

(I will not tell that you have a boyfriend, if you will give me your Prada bag.)

The five (5) multicultural forensic determinants

I have list down the five multicultural forensic determinants that would lead to positive identification of a suspect in no particular importance:

- Text types
- Indigenous Orthography
- Syntactical features
- Cultural fingerprints

In forensic linguistics, basic is the text type in aiding to understand the purpose of determining subliminal and apparent intent of a suspect or perpetrator of a crime such as threat notes on sms, mail, email, suicide notes, threat assessment, and other data that are often call for many different types of forensic analysis.

Examining text types on the basis of the police records such as blotter logbook and report of the investigator and gathered specimens should yield a lead as to positive identification of the suspect. This process of criminal profiling on a typical level of analysis and gathering of data are police matters done in order to establish a link who could be the author of the crime or merely to identify a suspect.

Both the medium on written and spoken language as well as dialects has distinctive features that may reveal an individual's geographical origins, tribe, ethnicity, age, sex, occupation/vocation, hobbies, interests, educational attainment, tribe and religious beliefs.

Consideration as to the geographic origins of the suspect especially in the Philippine setting would easily reveal the whereabouts of the suspect especially when the evidence presented are in the form writing. Speech on the other hand is rarely recorded but sometime warranted when there are witnesses heard the utterances and would reveal a distinct tone which can be explored to establish a strong lead of identification.

Succinctly, written communications in the Philippine setting offers significant clues, especially on the usage of their native or ethnic transcriptions or orthography. According to the data of Commission on the Filipino Language, the government agency arm mandated to preserve all the languages in the Philippines states that there are 130 languages in the Philippines and each language has unique characteristics as to the level of orthography, speech system, and practices. This data would probe essential to associate any person being pursued by the law when presented by concrete evidence such as any form of text type indicative of indigenous orthography that would point to a certain geographic origin.

Regional languages and dialects as lead

Multicultural determinants are cultural make-up and language systems infused to reveal aspects of cultural entities on a lexical and syntactic level of analysis. Like in this written note made by the suspect handed over to a bystander to the police station, which states:

“Fafatayin ko kayong mga fulis sa presinto 6 dahil inaresto nyo ko at finahirapan!” (I shall kill all the police in this Precinct because you tortured me!)

The statement would suggest that the syntactic feature of the note was made in a Filipino standard language pattern but the ‘f’ that was used to replace to ‘p’ is evident to state that the suspect could come from a “Tenure Tribe” from the Island of Mindanao or can be found at South Cotabato. Moreover, it is also evident in writing in Waray the prominence in letter ‘r’ especially in speech where they aspirate in a suprasegmental way like the word ‘droga’ (drugs) is spoken as ‘druga’ with emphasis on letter ‘r’. It’s also noteworthy that Waray language can also be traced in writing even if it uses the lingua franca in Filipino by alternating letter’s to ‘l’ which the former is more of Sebwano speaker. Relatively, the Waray speaker can easily be identified using this orthographic peculiarities which are unique to them. Thus, in this grave threat to the police officers, they were able to back track all those who posted bails at that time and was able to locate the person based on the file and province indicated in the blotter sheet and later on was accosted and admitted that he made the note.

Related to this is the case decided by the Supreme Court of the Philippines on finding petitioner Santiago Paera guilty of three counts of Grave Threats, in violation of Article 282 of the Revised Penal Code (RPC).

When petitioner inspected the tank after constituents complained of water supply interruption. Petitioner discovered a tap from the main line which he promptly disconnected. To stem the flow of water from the ensuing leak, petitioner, using a borrowed bolo, fashioned a wooden plug. It was at this point when Indalecio arrived. What happened next is contested by the parties.

According to the prosecution, petitioner, without any warning, picked-up his bolo and charged towards Indalecio, shouting Patyontikaw! (I will kill you!). Indalecio ran for safety, passing along the way his wife, Diosetea Darong (Diosetea) who had followed him to the water tank. Upon seeing petitioner, Diosetea inquired what the matter was. Instead of replying, petitioner shouted Wala koy gipili, bisag babaye ka, patyon tikaw! (I don’t spare anyone, even if you are a woman, I will kill you!) Diosetea similarly scampered and sought refuge in the nearby house of a relative. Unable to pursue Diosetea, petitioner turned his attention back to Indalecio. As petitioner chased Indalecio, he passed Vicente, and, recognizing the latter, repeatedly thrust his bolo towards him, shouting Bisag gulang ka, buk-on nakoimo ulo! (Even if you are old, I will crack open your skull!) The emphasis is mine, to highlight the dialect used in the transcript of the decision.

Ascertaining the dialect that was used in the absence of other evidence would guide any investigators to map out in the vicinity group of individuals who belong to the same region who speak the same dialect. The Baranggay

could give statistics of the said information pertinent to the location of these individuals. The case above demonstrates how ethnographic peculiarities in terms of transcription is concerned could establish basis of evidence to build a case and provide a credible lead of a suspect.

Discussion and Conclusion

In a highly linguistic melting pot region such as Manila as center of this study, it can be generalized that determining leads in establishing the suspect at the very least can be made by ascertaining which language is spoken by the perpetrators at least one of them if it’s made by group or duo. This can be deduced from the witnesses’ accounts and the victim per se. Threats in general uses medium such as phone/cell-phones (audio), e-mails, and mail to conceal their identities and to cause intimidation. These mediums are evidentiary tools by forensic experts in determining the threat levels; whether it is imminent, false or prank. The age, gender, locality, language/dialect, tribe, and education in establishing the whole picture of the author of the notes are vital puzzles in constructing a lead. The multicultural and ethnicity of the language in the Philippines are by itself forensically hard to decrypt. But by the very nature of its uniqueness bears the patent of each language identity. There may be a deviation for which one can be described, but by itself it represents a thumbprint of the user of the language entrenched in the cultural and dialectal sphere which should be considered as one of the incontrovertible evidences in indicting a crime in the court of law.

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