Kicking to Death

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Heinke: “Kicking to Death”
(Offenders’ Assessment of the Hazardousness of Kicks against the Head)

Abstract

Scope of work:
Preliminary research including findings of studies in forensic pathology and bio-mechanics shows that kicks against the head of a lying victim as part of a physical assault always have to be objectively assessed as potentially lethal battering, regardless of the offender’s sex, age, physical frame or, if applicable, footwear. With regard to criminal law the central problem is to establish whether – subjectively – the offender acted with an intent to kill as opposed to gross negligence concerning the potentially lethal results of the attack.

Hypothesis:
There is empirical judgement that certain extremely dangerous actions (e.g. the use of firearms against the victim’s head) are generally carried out with an awareness of the potentially lethal outcome, thus indicating an intent to kill. In other cases due to the lack of empirical judgement the court has to draw its conclusion of the offender’s intent solely on the existing individual evidence such as a confession, witness reports or circumstantial evidence, thus effectively leading to a reversed onus of proof. (The more certain of a lethal outcome the reasonable person would have been, the more justifiable it is to impute sufficient desire [intent] to convert what would otherwise only have been recklessness into intention to constitute the offence of murder.)

Based on previous interviews with different individuals the following hypothesis is to be established: It is generally known that kicks against the head of a lying victim as part of a physical assault may result in lethal injuries.

Method:
A judgementally (purposively) constructed sample of 830 persons (797 male) was interviewed using a questionnaire designed to learn the participants’ assessment of both the possibility and the probability of lethal injuries as a result of the discussed form of assault.
Results:
90% of the polled assess kicks against the head as a life threatening assault, nearly all others (9%) assess this kind of attack as "very hazardous".
A large part of the sample (37%) even expects life threatening injuries or the imminent death of the victim as a result of kicks against the head.

Conclusion:
The hypothesis of a general knowledge that kicks against the head of a lying victim as part of a physical assault may result in lethal injuries has to be accepted.
Therefore, when attacking an opponent with kicks against his head, regularly it is foreseeable for the offender that the victim can suffer life threatening injuries, even though this may not have been the aim of the attack.
This indicates (not proves!) an intent to kill on behalf of the offender.

References: