ABSTRACT

The grave consequences of faulty evidence are better imagined than told. What necessitates this study is the urge to know whether or not the admissibility-weight criteria which separates the functions of the judge and jury is partly responsible for the faulty pieces of forensic evidence used in giving jail terms and death sentences to innocent people. Critics claim that this important tool has failed to resolve the current deficiencies found in forensic science. This paper is therefore aimed at debunking the foregoing claim by arguing that: admissibility-weight tool in law of evidence is not to blame for the faulty evidence generated by forensic science as it still exposes faulty evidence. Pieces of evidence in support of our position were obtained from textbooks, journals and the internet. The study revealed that the current deficiencies noticed in forensic science are caused by careless and fraudulent forensic scientists and accountants including the Judge and the Jury that deliberately and fraudulently admit and give weight to faulty forensic evidence. A proactive approach was therefore, recommended through the establishment of an independent institute that will reveal deficiencies in forensic evidence before they reach the court rooms where the admissibility-weight distinction or tool will be administered. The findings of the study have disclosed a method for discovering faulty pieces of evidence before they are tendered in court.

Keywords: Evidence, admissible evidence, weight of evidence, forensic accounting and forensic evidence

INTRODUCTION

The occurrence of fraud cannot be proved and neither criminal conviction nor civil verdicts are possible without evidence (Okoye, 2017). Evidence in any form of litigation is helpful and inevitable but, faulty evidence is worse than lack of evidence because it has earned many innocent people unlawful jail terms and death. Globally, 5,731 people are said to have been wrongly convicted (Sherrr, n.d as cited in Medill Justice Project, 2019). According to Garner (2009), various studies estimate that between 2.3 and 5% of all prisoners are innocent while 10,000 people may be wrongfully convicted annually of serious crimes in the United States. Garner further asserted that one study conducted in 2014 showed that 4.1% of people awaiting execution are innocent while 340 of this number may have been executed since 1973. Hughes (2014) reported that data collected by Samuel Gross, a law professor and his colleagues in the United States on 7,482 people sentenced to death between 1973 and 2004 showed that 117 people were exonerated. In Memphis, largest city in the state of Tennessee, United States, a man was compensated with only $75 dollars (about ₦23,000) after being wrongfully jailed for 31 years! (Punchng.com, 2016). In Nigeria, Kazeem (2017) reported that between 2011 and 2015, 72.5% were in prison and awaiting trial without being sentenced. The foregoing shows the enormity of the injustices which faulty evidence has caused many innocent people world-wide. Nevertheless, applying the admissibility-weight criteria effectively will to a large extent, facilitate the use of scientifically valid methods to expose faulty pieces of evidence during trials.

Previous researches on law of evidence did enormous work on criticizing admissibility-weight distinction without evaluating the integrity of expert witnesses, Judges and the Jury. The investigation of the causes of faulty forensic evidence is further investigated here to include the human factor. The rules for determining admissibility and weight of evidence are still potent and credible but, it is up to the expert witnesses, the Judges and the Jury to apply them effectively. This paper is anchored on the argument that admissibility-weight criteria in law of evidence still exposes faulty evidence even though the occurrence of mistakes and frauds still persists in forensic science. This is the position we intend to defend in this short paper.

OBJECTIVES OF THE STUDY

The main objective of this paper is to investigate factors that contribute to the occurrence of faulty forensic evidence. The specific objectives are:

1. To explain the admissibility-weight criteria or rule.
2. To disclose the arguments put forward against the admissibility-weight rule.
3. To debunk the claims made by critics that admissibility-weight distinction is responsible for the errors found in forensic science.
4. To provide pieces of evidence that support our argument that admissibility-weight distinction is not responsible for the occurrence of faulty forensic evidence tendered in court.

CONCEPTUAL FRAMEWORK

Evidence is admissible in court when it is relevant and reliable and it becomes weighty when it is persuasive, believable and have probative value. It can therefore, be conceptualized that the admissibility status of evidence makes evidence to become weighty implying that the Judges’ action influences the Jury’s action when admissibility-weight criteria are effectively applied. The final
The verdict passed by the Jury is therefore, a function of the Judges’ correct application of the rules used in admitting the evidence in court.

THEORETICAL FRAMEWORK

1. This work is based on the fraud scale theory of 1984 propounded by Howe and Romney. The theory associates personal integrity with each individual personal code of ethical behavior. When an individual makes a decision or partakes in a decision making process, his personal integrity becomes observable. The forensic accountants, forensic scientists, the Judge and Jury all need to demonstrate high level of integrity because of the tendency to commit fraud.

2. Wolfe and Hermanson fraud diamond theory of 2004 also provide the theoretical foundation for this work. The other three elements of fraud triangle theory namely pressure, opportunity and rationalization cannot lead to fraud when the fourth element called ‘capability’ is absent. The unlimited authority sometimes possess by forensic accountants or experts, the Judge and the Jury can make them become dishonest. 44 percent of people who perpetrate fraud in corporate institutions have enormous authority (Mathuva, 2009).

METHOD OF DATA COLLECTION

This is a qualitative study that basically relies on secondary sources of data. The paper therefore made use of key and relevant textbooks, journals and the internet. It is an opinionated research paper based on the pieces of evidence obtained from secondary sources.

1. WHAT IS ADMISSIBILITY-WEIGHT CRITERIA?

This criteria states that it is the Judge that determines the evidence that is admissible in court while the Jury assess the weight of the evidence tendered in court during trials. The use of methods which are scientifically valid and reliable for determining and assessing the weight of evidence is encouraged. Judges should not generate their own conclusions but, should depend solely on principles and methodology that are scientifically valid and reliable (Daubert V. Merrell Dow Pharmaceuticals Inc as cited in Faigman, 2017). The general-specific approach as will be explained later, is used to decide on the evidence that is admissible (Judge) and weighty (Jury).

2. ARGUMENTS AGAINST ADMISSIBILITY-WEIGHT CRITERIA IN LAW OF EVIDENCE

Critics have argued that admissibility-weight criteria could not prevent the Judges from admitting faulty pieces of evidence that made many innocent people to be wrongfully convicted of crimes they never committed. These Judges, according to them, admitted faulty or perjured witness testimony generated by bad forensic science. According to the Innocent Project (n.d), Amanda Knox, OJ Simpson, David Camm and Ford Heights Four were wrongfully convicted of murder in 2007, 1994, 2000 and 1978 respectively and all of them were exonerated after 8 years, 1 year, 13 years and 17 years respectively. Most tragic of all these cases according to critics, was that of Cameron Todd Willingham who was wrongfully convicted of murder in 1991 and exonerated in 2010 after being executed in 2004.

Furthermore, these critics argued that social engagements, sick leave, maternity leave and other holidays given to Jurors delayed cases and made Jury to give weight to faulty evidence. Two victims of this unfortunate developments, Lorraine (wife of genuinely convicted Edwin McLarens and her 75-year old uncle were found not guilty after 320 days trial at Glasgow High Court. More worrisome was the fact that, the trial could not take place because a Juror went on strike. Critics of admissibility-weight criteria argued that financial fraud cases with many count charges are usually too complex for the Jury that usually consist of ordinary people or non-experts in financial affairs. The question now arises as to whether there should be Juries in fraud cases. They argued that Juries are not good in handling fraud cases (Two Found Guilty of Fraud after UK’s Longest Criminal Trial, 2017).

The criteria, according to them, has also failed to assist Judges and Jury in identifying false guilty pleas. These are situations where innocent people are pleading guilty or accused persons are pleading guilty for crimes they did not commit. Out of 250 people exonerated, 19 of them had previously pleaded guilty. Public (Prosecution Service of Canada, 2019). There is ample evidence that federal defendants are being coerced to plead guilty because the penalty for exercising their constitutional rights is simply too high to risk” (National Association of Criminal Defense Lawyers as cited in Pavlo, 2018). According to Purpura (2012), the national Registry in Louisana of United States reported that at least 135 people confessed to crimes they did not commit and at least 129 people were convicted of crime that never happened. Unreliable and invalid forensic evidence and expert testimony were used to convict people in the United States leading to 45% of wrongful convictions (The Innocent Project, n.d).

Failure of the court to apply the criteria means that it is avoidable. Opponents of the admissibility-weight criteria argued that the criteria received little attention in court despite the fact that it is fundamental to all evidential decisions and it only started gaining prominence when the court decision in Daubert V. Merrell Dow Pharmaceuticals Inc. was made. Critics of the criteria also argue that scientific evidence has a complex nature and enormous confusion has arisen among courts as to where the authority of Judges ends in determining admissible evidence and where the responsibility of the Jury in assessing the weight of evidence begins.
3. WHY THESE ARGUMENTS ARE FALSE

It is absolutely wrong to blame the wrongful conviction of innocent people on the failure of admissibility-weight criteria. It is only its application that has failed and when the right people with integrity took scientifically valid and reliable evidence to the same court that wrongfully convicted innocent people, justice was granted. For example, Amanda Knox and four others were granted justice because the pieces of evidence that exonerated them were considered admissible by the Judge and assessed as weighty by the Jury.

It is true that Jurors can be engaged with social programs or be on sick leave, holiday or even maternity leave during trial period. This can in no way be responsible for delayed trial and wrong verdict. The justice system is a process which involves thorough and meticulous investigations that usually take a long time to complete. Despite the fact that financial fraud cases are usually complex, Jurors are still aware of their responsibilities as contained in the admissibility-weight criteria which limits them to case-specific issues. All the pieces of evidence no matter how numerous they may be, will be treated individually in the light of the general framework that make them admissible and then as case-specific that make them weighty.

False guilty plea does not allow the evidence of the prosecution to be challenged in court. What this means is that the trial of the defendant will consequently not take place. In such a situation, the admissibility-weight criteria becomes less relevant. The Judge can however, prevent a false guilty plea through a judicial enquiry into the facts supporting the charge. A trial Judge can make a factual enquiry or a pre-sentence investigation can be conducted to see if the facts support the charge. If the facts support the charge, there will be no justifiable reason why the trial Judge should not accept the plea of guilt. Alternatively if the Judge has facts that do not support the false plea and he still accepts the plea, it then becomes a matter of integrity and this has nothing to do with the effectiveness of the admissibility-weight criteria. It is all about integrity. The criteria is designed for Judges and Jury that have integrity.

4. ARGUMENTS IN FAVOUR OF ADMISSIBILITY-WEIGHT CRITERIA IN LAW OF EVIDENCE

A cardinal objective of admissibility-weight criteria in law of evidence is to ensure that faulty evidence is not used to give a verdict during court trial. It emphasizes that forensic evidence brought before the court is admissible and weighty. Admissibility of evidence is first determined by the Judge before the Jury will now be required to assess the weight of the evidence. This distinction between admissibility and weight is fundamental to any justice system since it aligns with evidence codes and constitution due process, supports the right-to-Jury provision and prevents the Jury from listening to unreliable evidence. Waigman further asserted that faulty forensic evidence arises at trials because a clear distinction is more often not made between admissibility and weight of evidence. If a judge and the jury decide to admit and give weight to a piece of forensic evidence they know is faulty, then this becomes a matter of integrity and not that of admissibility-weight criteria.

The criteria creates a platform for testing the credibility of expert testimony. Where a witness lacks credibility, his testimony will not be deemed by the Judge as admissible. It is therefore, very risky to admit the testimony of a witness, forensic scientist or accountant who lacks credibility and integrity as this can lead to faulty evidence during trial. It is therefore, critical for counsel to bring credible witnesses before a Jury. According to the Association of Certified Fraud Examiners’ Conference (2011), Rick Hoyle who was wrongfully convicted of soliciting the destruction of evidence, racketeering, premium funds misappropriation and solicitation of grand theft, was exonerated because a forensic accountant revealed convincingly in court that, the prosecution witness did not only lack valid and reliable evidence to support his case, but also paraded fake qualifications and submitted fake resume. This lack of credibility was discovered when a cross-examination was conducted by Hoyle’s expert witness.

Therefore, the criteria does not recognize the testimony of an expert that has not been cross-examined by the defendant. This is in line with the rule under Crawford V. Washington 541 U.S 36 which requires the analyst to testify in person. For example in Melendez-Diaz V. Massachusetts, 2009, it was held at the supreme court of the United States that the admission of the expert witness certificate without the physical appearance of the witness for cross-examination, violated the petitioner’s (defendant) Sixth Amendment Right to confront the witnesses against him. A lower court had earlier held that cross-examining the witness was immaterial, but, this decision or judgments was rejected by the Supreme Court (‘Forensic Science Has Serious Deficiencies, n.d as cited in The Innocence Project, 2019).

The admissibility-weight distinction is in line with the general nature of science. This is the reason why when this distinction is effectively applied, scientifically valid and reliable pieces of evidence are generated. The Judge uses a general assertion to determine an evidence that is admissible in court while the Jury uses a specific assertion to assess the weight of an evidence. This general-specific approach used by the Judge and Jury is derived from science. For instance, Okolo (1987) general assertion that fraud constitutes wrong totals, wrong brought forward, overstating expenditure or recording non-existent expenditures, non-recording of receipts and teeming and lading, is an empirical matter that is left for the Judge to decide as basis for determining forensic evidence (admissibility) while a specific assertion that a defendant has actually committed any of the foregoing frauds, is a matter left for the Jury to decide as basis for assessing the weight of the forensic evidence (weight). While the judge uses general assertion from empirical research, the Jury uses a specific assertion from conditional facts. This is the way admissibility-weight criteria is applied in courts. The problems which have bedeviled forensic science are therefore, caused by fraudulent and careless forensic scientists and accountants. After all, these deficiencies occur long before they reach the court rooms where the application of admissibility-weight criteria usually takes place. The judges and the jurors are not forensic experts or forensic accountants and they do not have their own independent academy of forensic science to verify and validate the authenticity of forensic evidence brought before their courts of jurisdiction. It therefore, does not make much sense in using the challenges and frauds in forensic science to critique admissibility-weight criteria.
The admissibility-weight distinction or criteria has encouraged and motivated ethics-minded people to pool their hard-earned resources together to help exonerate people who have been wrongfully convicted. The Innocence Project which exonerated Amanda Knox and four others already mentioned in this paper, was successful because the new pieces of evidence presented before the court on behalf of these wrongfully convicted people were admissible and weighty.

FINDINGS

1. The admissibility of evidence and weight of evidence when effectively aligned, prevents the use of faulty pieces of evidence in giving verdicts during court trials.
2. Lack of clear distinction between admissibility of evidence and weight of evidence gives rise to faulty forensic evidence.
3. The admissibility-weight distinction aligns with the general nature of science and such an alignment produces scientifically valid and reliable pieces of evidence.
4. Admissibility-weight distinction becomes less relevant when there is false guilty plea.
5. A trial Judge’s factual enquiry or a pre-sentence investigation prevents false guilty pleas.
6. Deficiencies noticed in forensic science are caused by careless forensic scientists and accountants.
7. Forensic evidence becomes faulty long before they get to the Judges and the Jury who subsequently use admissibility-weight criteria.
8. Lack of integrity makes Judges and Jury to deliberately and fraudulently admit and give weight to faulty pieces of forensic evidence.
9. Often times, pieces of forensic evidence are not critically evaluated before they are taken to court by expert witnesses.
10. Admissibility-weight distinction encourages and motivates ethics-minded people to pool their hard-earned resources together to help exonerate wrongfully convicted people.

CONTRIBUTION TO KNOWLEDGE

The knowledge added to the existing literature is that faulty pieces of evidence can be discovered long before they are tendered in court if and only if a proactive approach is applied by all who are entrusted with evidential responsibilities.

CONCLUSION

The deficiencies in forensic science are caused by careless and fraudulent forensic experts, accountants, Judges and Jury and not by the claimed weakness in admissibility-weight criteria. Ironically, it is the effective use of the admissibility-weight criteria by ethics-minded people that has even exposed or revealed the current challenges faced by forensic science and this has to a large extent provided an enabling platform for the exoneration of people that have been wrongfully convicted of crimes they never committed.

THE WAY FORWARD

The current situation where most people are exonerated from wrongful convictions after they have spent many years in prison or have been executed, is very unfortunate. We need to discover these faulty pieces of evidence before they are either mistakenly or fraudulently taken to our court rooms. It is therefore, a welcome development when the Supreme Court of the United States recently advocated for the establishment of an independent institute of forensic science. This academy of forensic science should consists of men and women of integrity who will be ready at all times to apply the admissibility-weight criteria effectively. The way forward is to be proactive before applying the admissibility-weight criteria or distinction. This proactive approach will discover the errors and frauds in forensic evidence before they are taken to our court rooms. The time has come for us to put an end to this ‘medicine after death approach’ and that time is now!

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