

LGBTQIA+ Panic Defense: How to Get Away with Crime

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Abstract

Panic defense is something that is rampant across the United States that is causing a major issue. Through the use of this defense, many individuals since the 1980s have been using the defense in the manner to lessen the crime that they have done to, hopefully, not have a felony on their legal record. This is a situation that is plaguing the United States and is causing many social injustice issues that is absolutely is evil. The discussion of multiple case studies will allow us to analyze how truly rampant this social injustice is and how this issue is causing many families hardship, to which those victims will not be able to get the justice they need that they need, or rather, what their family needs should the said victim was killed by the vicious crime. This defense is rooted in phobia towards members of the LGBTQ+ community, and through analyzing the case studies explained, we can get the information needed on how to stop this major injustice that needs to be banned federally.

Overview

LBTQIA+ panic defense, often referred to as Gay/Trans panic defense, is a legal strategy used in cases to limit the possible sentence of an individual who is accused of committing a violent hate crime against someone generally based on fake sexual advances by someone of the LGBTQIA+ community against someone who is of the heteronormative world. This tactic is used to excuse these actions by stating the individual who is accused of the hate crime was in a “panic” after discovering information based on any possible unknown information that would differentiate the heterosexual, cisgender individual from the homosexual, possibly transgender, individual. According to the LGBTQ+ Bar Association (2021), this legal action can be used to excuse murder. This defense can be used in three different ways, which all root in non-violent sexual advances. Defense of insanity or diminished capacity (often no longer used as it was based on the Gay Panic Disorder which was removed from the DSM), defense of provocation (a non-violent sexual advance that was considered “provocative” that led to the assault of the victim), and defense of self-defense (the defendant claims they were about to receive serious bodily harm because of an individual’s gender or sexual identity) (LGBTQ+ Bar Association, 2021).

There are many instances of this defense being used in court, the earliest documented was in 1995 after the murder of Scott Amedure, after the talk show with Jenny Jones to which Scott had a crush on his male friend. Unfortunately, as stated earlier, Scott was killed because of this, and it truly shows how homophobic society used to be. The murderer was acquitted for second-degree murder. After this, there have been many other cases that have resulted in deaths of individuals from the LGBTQIA+ community, to which many defendants have been acquitted of an actual charge of any murder (LGBTQ+ Bar Association, 2021). Ranging from the late 1990’s

to even the latest one, 2015, with a spike of multiple hate crimes in 2008 especially. Many states have banned this defense, but there are many that have not. As of April 2021, 16 states have banned the Panic Defense from being used, while 10 states have introduced legislation against the use of this tactic. Based on this, 24 states still have yet to introduce a ban or already have a ban on the use of Panic Defense. There is currently federal legislation to ban the use of this tactic in courtrooms across the United States, and as of April 2021 it is still in the introduction phase of the legislation process. However, Panic Defense is still something that does need to be advocated against, as it generally has roots in homophobia, transphobia etc., and is still a problem even if there is federal legislation in the process to remove it from courtrooms. Multiple members of the LBGTQIA+ community live in fear from the heteronormative world where they may be violently attacked due to their own sexuality or gender identity.

As for the advancement of social justice, as stated before, allowing this defense to be used in any manner in courtrooms will continue to further insinuate homophobia, transphobia, etc. Especially if you understand and look at the actual cases that this defense had been used, all of the individuals who had committed the crime were using panic defense in a way in which homophobia thrives, which revolves around the jury and judge allowing for this defense to be used in a manner that would still lessen the crime that the individual had originally committed. Judges and jury that will allow for this defense to be used is only, as stated before, further insinuating phobias toward the LBTQIA+ community. This action needs to be stopped in order to give those who had committed hate crimes the proper punishment that fits the crime, and no longer allowing for this defense to be used in any state.

The Actual Problem

As stated earlier, Panic Defense is often used to excuse many violent hate crimes in many court cases that have resulted in death, as many generally have, by explaining the defendant went temporarily insane or defending themselves from the, often, resulting non-violent sexual advances or discovery of one's gender identity. Another major defense that has been used, is that the defendant had been "frightened" by sexual advances to which they often responded by brutally beating, often killing, the individual who had done that to them. Many courts have failed many victims' families because they are allowing this excuse to be used as an actual defense, while also failing the victims themselves due to not allowing justice to be told. As of today's society, the LGBTQIA+ community is already suffering from social isolation and constantly being told that these individuals are "mentally ill."

The term "LGBTQ+ panic defense" was originally coined by Edward Kempf, who was a psychotherapist, who "claimed that, in his studies of heterosexual-identifying males, they became agitated, enraged, and panicked by their acute homosexual thoughts or ideas" (Russo, 2019). Furthermore, it was stated by Russo (2019), that often when this defense is used it puts the victim's sexual or gender identity under a microscope that causes the jury to often change the view of who is to blame, rather than who is truly at fault for the crime, which is the defendant. In order for this defense to work in courtrooms, is that the defendant must prove that the victim's gay advance was a stimulus to cause the, generally, homicidal reaction that the defendant did (Russo, 2019). This statement implies that members of the LGBTQIA+ community are leaning into rape culture, by the unwanted sexual advances, and that the reaction makes those who had injured a member of the community as "innocent," which ignores their guiltiness. As stated by Russo (2019), the rate of violence toward LGBTQIA+ individuals is already a higher rate than the heterosexual counterparts.

In order to understand the true prevalence of the panic defense being used, we have to examine the many times that it had been used, as well as the amount of the estimated adult LGBTQ+ population, which is an estimated 18.4 million, which is 5.6 percent of the population of the United States (LGBTQ+ Bar Association). Some individuals even have higher likelihoods of becoming a victim of a hate crime, due to things like race and/or ethnicity of said individual. Based on the FBI's official report, in 2019, of hate crimes, 16.7% of individuals became victims for their sexual orientation, and 2.7% became victims due to their gender identity (FBI, 2021). With this information, the number of hate crimes that happened in 2019 was calculated to 1,429 victims. In 2019 alone, 61.8% of the victims for sexual orientation were motivated by an anti-gay, male, bias (FBI, 2021).

In order to understand the issue of panic defense, analyzing the times that it has been used will help us, as stated earlier, Scott Amedure was killed after a talk show, during which he confessed his feelings for his male friend. This male friend used the defense and was only charged with second-degree murder after the defense had argued that he had "diminished capacity" due to the attraction Scott had confessed to. Another example, just in 2015 alone, was the death of Daniel Spencer who was stabbed by his neighbor, Robert. Robert made the claim that he acted in self defense after he rejected a sexual advance, to which he stated that Daniel had acted aggressively. The use of panic defense in this shows that he was trying to use his homophobia as an excuse of literal murder, to which this allowed him to get the lesser conviction of criminally negligent manslaughter. A well-known example of this would be what happened to Matthew Shephard in 1998. He was beaten, tortured, and left to die by two individuals. He did receive medical help, but unfortunately died six days later because of head trauma. The defendant argued that he was driven to temporary insanity on the basis of unwanted and alleged

sexual advances by Matthew, fortunately, this defense was rejected by the judge and allowed for the defense to create another argument.

Context of Defense

A study conducted by Jessica Salerno (et al), focused on the political ideology on the jury is the reasoning that many defendants basically, and sometimes literally, get away with murder. The study also wanted to see if the conservative jury would switch the outrage from the defendant to the victim, to which it was revealed that conservative jurors often switch the outrage from the defendant to the victim of the hate crime (Salerno et al, 2015). It was also found that the political ideology had more effect on the victim's perception rather than the defendant's perception considering they had committed the actual crime (Salerno et al, 2015). However, a major limitation that the study had is that most of the hate crimes committed, which especially connects to the context of this study that was modeled after a real case, is generally between two men rather than two women, so LGBTQIA+ Panic defense is rarely studied between two women and that most of the research comes from two men. Going forward in the research, there definitely needs to be study based around the defense being used in the case between two woman or any individual who is not gender-conforming, in order to understand the true connection in which this defense has on different genders to get the true assessment of why this defense is used, and how.

In a study conducted by Michalski and Nunez, they focused on the same topic of panic defense that Salerno had but wanted to expand on it. Salerno focused on conservative jurors and the effect that panic defense had on them, which it was found that those individuals had a higher rate of accepting the defense than liberal jurors, while Michalski wanted to expand on juror characteristics. A major characteristic that is very important, it was found that jurors have “a

strong positive correlation between religious fundamentalism and hostility toward homosexuals due to the belief that homosexuality is a moral abomination” (Michalski, Nunez, 2020). Based on characteristics that Salerno had found, they wanted to expand on those and base it around the gender orientation that may influence the verdict of the defense being used. “Research has shown that heterosexual men tend to harbor more rigid traditional gender role beliefs than heterosexual women, which, in turn, contributes to their higher level of negative attitudes toward homosexuality” (Michalski, Nunez, 2020), which shows that a jury full of heterosexual men would tend to initialize more stereotyped gender roles, and thus, would have those influence their verdict in a case if there were to be a court case that did have the defendant using a form of panic defense. This same study also wanted to expand the conditions that the panic defense may be unsuccessful and successful by analyzing assault and homicide as different case types. The study concluded with the information that 77.4% of the 249 participants had chosen to the lenient misdemeanor assault verdict, while finding that 65.5% of the time that the panic defense was used compared to 88.3% when the neutral defense was used (neutral provocation). In the homicide case, it was found that 70.1% of the participants chose the lenient manslaughter verdict, while interesting showing no significant effect of either defense of being used, both panic defense and the neutral provocation defense (Michalski, Nunez, 2020). A major limitation of this specific study is that it focused more on gender orientation of the victim, rather than looking at all juror characteristics that may come into play when making a decision for the verdict of the case.

In a study conducted by Jenne Tomei (et al), they based the study around the information that was found in 2011, which was that male jurors tend to be more lenient on defendants when panic defense is used in a case revolving around male-on-male, rather than woman-on-woman.

The study found that 12 of the 402 participants had missing data on variables included in the study and were immediately excluded from the analysis of the data. A major part of this study is that the participants were more likely to blame the victim, rather than to hold the defendant accountable for their actions after the panic defense had been used in the study (Tomei et al, 2017). The study also based around the verdicts with three options: misdemeanor assault, felony assault verdicts, and not guilty. As for the result of the verdicts that were chosen by the participants, it was shown that 34.3% gave misdemeanor assault verdicts, 49.6% gave felony assault verdicts, and 16.1% gave not guilty verdicts. It was stated that this present study provided extra support for the notion that the panic defense may be rooted in an individual's prejudicial beliefs against individuals who do align with the LGBTQIA+ community. This research also aligns with other research that indicates that those with conservative style politics, or even those who identify with the right-wing, have shown to be more likely to deliver lesser verdicts.

Implications for Social Work Practice

Social workers as a whole must not discriminate any individual based on anything, while also not excusing this social injustice to continue to be in use. The panic defense injustice is allowing many individuals to get away with violent crime, is something that according to the NASW Code of Ethics, that social workers will not stand for and must start any policy to end the use of panic defense in courtrooms across the United States. There is currently policy in the House of Representatives that will federally ban the use of panic defense across courtrooms in the United States, but until it will hopefully be passed, social workers must stand up for this injustice in any way that they possibly can.

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