FORENSIC EVIDENCE: A PANACEA FOR EXONERATION IN CRIMINAL JUSTICE ADMINISTRATION IN NIGERIA

By

Osato Mabel Oniha* and Bright E. Oniha**

Abstract
Many accused persons go through all sorts of punishments for crimes they know nothing about. The use of forensic evidence in investigations and trials has steadily gained in popularity as an effective and powerful tool for seeking truth and justice. Forensic evidence is not new in Nigerian courts. That challenge has been failure to develop them. This paper shows the exoneration powers that abound in the use of forensic evidence. Doctrinal method is used to x-ray relevant case laws and statutes to illustrate that victims are at the mercy of forensic evidence. It is recommended that the relevant statutes should be amendment.

Keywords: Evidence, Forensic Evidence, Forensic Science, Exoneration, Panacea.

Introduction

The investigatory procedures of many jurisdictions rely heavily on eye witness testimonies (a major source of police investigation), circumstantial evidence in the absence of eye witness testimonies and finally, confessions[1] where others fail. A combination of two or all of them is a fantastic investigation done as far as they are concerned. Originally, physical torture was used to procure a confession which was the most reliable means of establishing guilt. In some societies, admissions remain the principal object of the investigatory process.

Granted that these investigatory processes do yield result, but many a times, the innocent ones are made to suffer for the crimes they know nothing about. This now leave us with the option of forensic evidence that is more reliable. In fact, experts agree that it is often mistaken eyewitness identification that puts innocent people in prison, especially those from a photo array and a line-up.[2] False identification is influenced by various methods used by investigation officers in constructing and conducting line-ups and photo arrays. These various methods can result in confusion on the part of the witnesses and pick on anyone that seems likely to be the perpetrator. Some witnesses for want of getting someone to hold on to as the wrongdoer pick on anyone that they so desire or falls prey while others pick on people deliberately to achieve their mischievous desires. Forensic evidence has in a plethora of cases proven these other forms of evidence inappropriate especially the eye witness account.

Evolution of Forensic Evidence

Forensic evidence has long existed without the consciousness of realizing that forensic evidence was been used in solving cases. However, the account of its origin can be traced to as far back as 287–212 BC, when the Greek Archimedes invented a method for determining the volume of an object with an irregular shape. Archimedes was asked to determine whether some silver had been substituted by the dishonest goldsmith. Archimedes had to solve the problem without damaging the crown, so he could not melt it down into a regularly shaped body in order to calculate its density.

* Ph.D, LL.M, BL, B.Sc. (Hons), Lecturer, Edo State Polytechnic, Usen, Edo State. **mabeloniha2@yahoo.com**
** Ph.D, LL.M, BL, Member, Chartered Institute of Arbitrators, Nigeria, Area Court Judge, Edo State Judiciary. **Onihalawlibrary@gmail.com**

[1] Which are mostly forced

[2] Amy Sinatra, It's Him-Or is it? Mistaken Identity Can Land Innocent People in Jail, The Eyewitness Consortium available at http://eyewitnessconsortium.utep.edu/Documents/Sinatra.pdf# accessed 4th October, 2018

Instead he used the law of displacement to prove that the goldsmith had taken some of the gold and substituted silver instead.[3]

The first written account of using medicine and entomology to solve criminal cases is attributed to the book of Xi Yuan Lu (translated as *Washing Away of Wrongs*, written in China by Song Ci in 1248, during the Song Dynasty. In one of the accounts, the case of a person murdered with a sickle was solved by an investigator who instructed everyone to bring his sickle to one location. (He realized it was a sickle by testing various blades on an animal carcass and comparing the wound.) Flies, attracted by the smell of blood, eventually gathered on a single sickle. In light of this, the murderer confessed. The book also offered advice on how to distinguish between a drowning (water in the lungs) and strangulation (broken neck cartilage), along with other evidence from examining corpses on determining if a death was caused by murder, suicide or an accident.[4]

Methods from around the world involved saliva and examination of the mouth and tongue to determine innocence or guilt. In ancient Chinese and Indian cultures, sometimes suspects were made to fill their mouths with dried rice and spit it back out. In ancient middle-eastern cultures the accused were made to lick hot metal rods briefly. Both of these tests had some validity since a guilty person would produce less saliva and thus have a drier mouth. The accused were considered guilty if rice was sticking to their mouths in abundance or if their tongues were severely burned due to lack of shielding from saliva.

In the 16th-century Europe, medical practitioners in the army and university settings began to gather information on the cause and manner of death. Ambroise Paré, a French army surgeon, systematically studied the effects of violent death on internal organs. Two Italian surgeons, Fortunato Fidelis and Paolo Zacchia, laid the foundation of modern pathology by studying changes that occurred in the structure of the body as the result of disease. In the late 18th century, writings on these topics began to appear. These included *A Treatise on Forensic Medicine and Public Health* by the French physician Francois Immanuele Fodéré and *The Complete System of Police Medicine* by the German medical expert Johann Peter Frank[5].

As the rational values of the Enlightenment era increasingly permeated society in the 18th century, criminal investigation became a more evidence-based, rational procedure − the use of torture to force confessions was curtailed, and belief in witchcraft and other powers of the occult largely ceased to influence the court's decisions. Two examples of English forensic science in individual legal proceedings demonstrate the increasing use of logic and procedure in criminal investigations at the time. In 1784, in Lancaster, John Toms was tried and convicted for murdering Edward Culshaw with a pistol. When the dead body of Culshaw was examined, a pistol wad (crushed paper used to secure powder and balls in the muzzle) found in his head wound matched perfectly with a torn newspaper found in Toms's pocket, leading to the latter's conviction.

In Warwick in 1816, a farm labourer was tried and convicted of the murder of a young maidservant. She had been drowned in a shallow pool and bore the marks of violent assault. The police found footprints and an impression from corduroy cloth with a sewn patch in the damp earth near the pool. There were also scattered grains of wheat and chaff. The breeches of a farm labourer who had been threshing wheat nearby were examined and corresponded exactly to the impression in the earth near the pool.

---

[3] C.O. Idahosa, The *Use of Forensic Science as an Investigative Tool – Wither Nigeria* Vol. 4, No. 1 of the Edo State Judiciary Newsreel, (2012) 24-26

[4] *Ibid*

[5] Wikipedia "*Forensic Science"* available at http://en.wikipedia.org/wiki/forensicscience. Accessed 4th 0ctober, 2018.

Other types of scientific evidence did not start to evolve until the 18th and 19th centuries, a period during which much of our modern-day knowledge on chemistry was just starting to be developed. Toxicology, the study of poisons, emerged as one of the new forensic disciplines, and was highlighted by the work of Orfila in 1840 with his investigation into the death of a Frenchman, Monsieur Lafarge. Following examination of the internal organs from the exhumed body, Orfila testified based on chemical tests that these contained arsenic, which was not a contamination from his laboratory or the cemetery earth. This evidence resulted subsequently in Madame Lafarge being charged with the murder of her husband, but more importantly raised the problem of contamination, a constant concern for any forensic scientist. During the latter part of the 19th century there was also considerable interest in trying to identify an individual. One approach, studied by Alphonse Bertillon, was to record and compare facial and limb measurements from individuals. This proved to be unsuccessful due to the difficulties in obtaining accurate measurements. However, this was the first recorded attempt in a criminal investigation to use a classification system based on scientific measurement. Interestingly and in accord with this principle, forensic scientists today use the results from a combination of analytical measurements to discriminate between groups or to compare samples[6].

There have since then been great advances in both medical and scientific knowledge which has contributed tremendously in the use of medical evidence or forensic evidence in courts till date.

Definition of Terms

Evidence

Evidence can be broadly defined as the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. In the legal parlance, evidence can be defined as all the means by which any alleged matter of fact, the truth which is submitted to investigation, is established or disproved. Evidence is meant to make clear or ascertain the truth of the very fact or point in issue[7].Simply put, evidence is a means through which facts are proved.

Forensic Evidence

Forensic evidence is evidence used in court especially evidence arrived at by scientific or technical means such as ballistics and medical evidence[8]. It is simply the evidence generated using science to prove or disprove facts. They include adhesive tapes, audio clarification, blood stains, post mortem samples, saliva, bones and teeth, cellular telephones, chewing gums, cigarette butts, condoms, clothing, soil, cosmetics, finger clippings and scrapings, food, footwear impressions, glass, gunshot residues, hair, paints, semen, tire impressions, fingerprints.[9]

Forensic Science

Forensic science is the application of a broad spectrum of sciences to answer questions of interest to a legal system. Forensic science analyses facts and materials scientifically to produce essential information or evidence to help determine the truth of a matter. It is the scientific method of gathering and examining information about the past. Simply put, forensic science is the application of scientific knowledge to legal matters.

Exoneration

The term exoneration was simply defined by the black's law dictionary as the removal of a burden,

[6] *Ibid*

[7] Bryan A. Garner, *Blacks' Law Dictionary* (9th ed., Texas: Law Prose Inc., 2009) 635

[8] *Ibid* 637

[9] Yinka Shonubi, *"Forensic Evidence in Civil and Criminal Trials"* available at www.writechangenigeria.com/forensic-evidence-civil-and-criminal-trials Accessed 1st September, 2018

charge, responsibility, or duty.[10] Chambers 21st century dictionary on the other hand gave the meaning of exoneration as to free someone from blame or acquit them of a criminal charge.[11]

Panacea

Chambers 21st century dictionary defined panacea as a universal remedy; a cure for any ill, problem etc.[12]

Branches of Forensic Science

There exist so many types of forensic Science in view of the prevalent technological breakthrough in science and technology. For the purpose of this paper, a few will be examined.

Forensic Photography

Crime scene photography, also known as forensic photography, is essentially the use of the photographic methods and techniques to aid legal investigations. As well as creating a permanent visual record of the crime scene in the state it was originally found, forensic photographs will play a huge role throughout the entire investigation. They can act as triggers for both witnesses and investigators when trying to remember details of the event and scene. Such photographs will also be greatly beneficial in reconstructing the events which took place. Finally, the photographs taken at the scene can be called upon in court to support verbal and physical evidence and give jurors a clear image of the crime.[13]

Forensic Toxicology

Forensic toxicology aids legal investigations through the study of poisons, substances that can harm or kill. The toxicity of a substance is dependent on various factors, including the amount ingested, and the age, weight, and health of the individual who ingested it. Forensic toxicology is utilized in most areas of a forensic investigation, though is particularly vital in suspicious deaths involving the suspected intake of some toxic substance. Drug testing methods employed are often used in cases of rape in which the victim has been slipped date-rape drug, rendering them unable to fight off their attacker while they are being sexually assaulted.[14] Forensic toxicologists provides an interpretation of these findings for investigatory and court purposes.

Forensic Odontology

Forensic odontology is the application of dental science to legal investigations, primarily involving the identification of the offender by comparing dental records to a bite mark left on the victim or at the scene. Dental records may also be used in the identification of human remains. Criminals have been known to leave bite mark impressions at the crime scene, whether it be in food, chewing gum or, more commonly, on the victim. When a bite mark is discovered, numerous steps should be taken. Once the mark has been sufficiently photographed, a saliva sample is taken from the area for potential DNA evidence. Casts or moulds can then be made[15]. If another bite impression is found elsewhere or if a teeth impression is taken from a suspect, a comparison can be made which act as a lead to the offender.

---

[10] Bryan A. Garner, *Blacks' Law Dictionary, Op. Cit*. p. 657

[11] Mairi Robinson, *Chambers 21st century dictionary* (Rev. edn. Edinburgh: Chambers Harrap Publishers, 2004) p. 458

[12] Mairi Robinson, *Chambers 21st century dictionary, Op. Cit*. P. 993

[13] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/photography. Accessed 2nd September 2018

[14] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/toxicology. Accessed 8th October 2018

[15] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/odontology. Accessed 4th October 2018

Forensic Anthropology

Forensic anthropology combines the theories and methods of anthropology, osteology and archaeology with legal investigations. The role of the forensic anthropologist can be varied, including aiding in the collection and analysis of human remains, the identification of victims beyond recognition, the estimation of time since death, and the establishment of injuries and potentially cause of death[16]. The victims examined by anthropologists are usually in the late stages of decomposition, are completely skeletonized (isolated bones or fragments to full skeletons) or have been rendered otherwise unrecognizable by fire damage or other injuries.

Forensic Art

This is the application of artistic methods to legal investigations[17].Forensic art can best be described as any art that assists in the identification, apprehension or conviction of offenders, or that aids in location of victims or the identification of unknown deceased persons. Forensic art is primarily used in the identification of victims and suspects. The artist works with the memories of witnesses to an incident to obtain a near likeness of a suspect. The composite image is used to help in suspect identification, elimination and witness corroboration. The artist also provides artistic evidence for courtroom presentations, the sketching of crime scenes, and the modification or enhancement of images.

Forensic Psychology

It is mainly concerned with the assessment and treatment of persons with mental disorders who conflict with the law. The psychologist assesses whether or not the defendant is capable of providing the plea they have made. If an individual is not deemed 'sane', meaning they do not understand what is right and wrong, they cannot be tried under ordinary circumstances[18]. It is common for a defendant to fake a mental illness in order to receive a more lenient sentence, an act known as malingering. Similarly, an assessment of future risk can help establish whether the offender is likely to commit the act again in the future, particularly important when passing a sentence. The treatment of mentally ill offenders is a task usually undertaken by clinical psychologists specializing in the forensic field of work.

Forensic Entomology

Forensic entomology studies the insects associated with a human body or an animal in order to estimate the minimum elapsed time since death. Entomologists can also determine the timing of dismemberment or decapitation, whether the body has been moved or disturbed after death, the presence and position of wound sites that are no longer visible to the naked eye and are also consulted in cases of human or animal abuse. Insects can also be used as DNA specimens to reveal the DNA of the victim they fed upon[19]. Forensic entomology is used primarily in cases of homicide, although may also be involved in suicide, accidental and natural deaths if time of death is in question. Forensic entomologists attend crime scenes and autopsies to collect insects. They transport this insect evidence back to their own laboratories, usually within a university setting, to rear and analyze the insect evidence. These must be fully secure labs. Forensic entomologists produce a written report and will present this report and their analyses in a court of law.

---

[16] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/anthropology. Accessed 6th October, 2018

[17] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/art.Accessed 23rd September, 2018

[18] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/psychology accessed 6th October, 2018.

[19] *L. A. Gail "Forensic Science Branches"* available at www.bcit.ca/files/cas/forensics/pdf Accessed 5th September, 2018

Forensic Engineering

Forensic engineering is primarily concerned with the link between engineering and law, whether civil or criminal. The purpose of an investigation will usually be to discover the cause of failure in a material, component, product or structure, and determine whether this failure was accidental or intentional. Whilst accidental failures may be the result of a natural cause, such as corrosion or fatigue, they may also include car, rail and aviation accidents. Engineering disasters, such as the collapse of a commercial bridge, will often be subject to such an investigation. However intentional failures could prove criminal intent and will often result in court proceedings. The forensic engineer will investigate involving various inspections of the faulty structure or item, the collection of evidence and data, and performing various experiments. The engineer's report at the end of the investigation will often include information on the problem and its cause, documental evidence (photographs, engineering drawings, testing records, quality control records, etc), potential solutions and suggestions for improvement, and evidence to support the entire report. It may be necessary for the engineer to present any findings in court, particularly in matters of litigation[20].

X-ray of Relevant Statutes on Forensic Evidence

In Nigeria

The relevant statutes bordering on the title of this paper are the Evidence and the Police Acts. Sequel to the enactment of the Evidence Act 2011 which repealed the old Evidence Act, Cap E14, Laws of Federation of Nigeria 2004, provisions for the admissibility of forensic evidence through forensic science were contained in it.[21] The current Evidence Act that repealed the 2004 Evidence Act also took advantage of it by also making provision for the admissibility of forensic evidence as can be found in part IV in the 2011 Evidence Act. The Act provides thus:

> 67. The opinion of any person as to the existence or non-existence of a fact in issue or relevant to the fact in issue is inadmissible except as provided in sections 68 to 76 of this Act.[22]
>
> 68. When the court has to form an opinion upon a point of foreign law, customary law or custom, or of <u>science</u> or art, or as to identity of <u>handwriting</u> or <u>finger impressions</u>, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.[23] (Underlining mine)
>
> (2) Persons so specially skilled as mentioned in subsection (1) of this section are called experts.[24]

The above statutory provisions are clearly geared towards the use of forensic evidence in our legal system. These were particularly spelt out in section 68 of the evidence Act above tagged "opinion of experts, when admissible"

The Police Act in lending support to the provisions of the Evidence Act under "police powers to detain and search suspected persons" made provisions for the taking of fingerprints, when to be retained and when to be destroyed. It is tagged 'Power to take fingerprints' and provides thus:

> (1) It shall be lawful for any police officer to take and record for the purposes of identification the measurements, photographs and fingerprint impressions of all persons who may from time to time be in lawful custody:
>
> Provided that if such measurements, photographs and fingerprint impressions are taken of a person who has not previously been convicted of any criminal offence, and such person is

[20] Stephanie Rankin "*Forensic Science Central"* available at www.Forensicsciencecentral.co.uk/engineering Accessed 12th October 2018

[21] Section 57, Evidence Act, Cap E14, Laws of Federation of Nigeria 2004

[22] Section 67, Evidence Act, 2011

[23] Section 68(1), Evidence Act, 2011

[24] Section 68(2), Evidence Act, 2011

> discharged or acquitted by a court, all records relating to such measurements, photographs and fingerprint impressions shall be forthwith destroyed or handed over to such person.
> (2) Any person who shall refuse to submit to the taking and recording of his measurements, photographs or fingerprint impressions shall be taken before a magistrate who, on being satisfied that such person is in lawful custody, shall make such order as he thinks fit authorizing a police officer to take the measurements, photographs and fingerprint impressions of such person.[25]

In the United States of America

United States of America is one of the leading countries as far as the use of forensic evidence in fighting criminality is concerned. It has many provisions lending support to the use of forensic evidence. For example, its Federal Rules of Evidence, 2014 (as amended)[26] contains elaborate provisions on the use of forensic evidence. These can be found in Article VII, tagged "Opinions and Expert Testimony"[27]. Rule 702 clearly lends support to the use of forensic evidence in the United States. It is headed 'Testimony by Expert Witnesses' and it provides thus:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert has reliably applied the principles and methods to the facts of the case.

From the foregoing, there is no doubt that there exist statutory provisions lending support to the use of forensic evidence in the United States of America and Nigeria. It is however submitted that in the case of Nigeria, there is poor usage and total lack of development on it to measure up with the current trend. This will clearly lead to situations of lack of certainty in convictions and consequently, wrongful convictions.

Cases of Wrongful Convictions and Subsequent Exoneration via Forensic Evidence

Brandon Moon v. City of El Paso et al.[28]

On a cold December morning in 2004, Brandon Moon felt the crisp air hit his face for the first time in seventeen years. He stood quietly, watching his breath float in the air while he cradled a cup of coffee. What he had known and maintained all along was correct; he was innocent. Most twenty-six-year olds are focusing on their careers, thinking about marriage and family, and enjoying life. In January 1987, Brandon Moon was not. Prior to 1987, Moon was on top of the world: he was a honourably discharged Army veteran, a sophomore at the University of Texas, and living with his girlfriend, Sarah. After graduation, Moon had hoped to become a "lifer" in the Air Force and fly fighter jets. He had dreams and goals to fulfil. In December 1987, however, all this changed when a woman was sexual assaulted in her home and claimed that Moon was her attacker. A man with a stocking mask and a gun forced her into her bedroom where she was raped. After the attack, the victim drove to a local store where she asked an employee to call the police. She was subsequently taken to the hospital and examined. The victim's physician observed sperm on slides prepared from the vaginal washings. The day after the attack, the victim was shown a photographic array that included Moon's picture. She told police that Moon looked like the perpetrator but that she could

[25] Section 30 of the Police Act, 1943, Cap P19 Laws of Federation of Nigeria, 2004

[26] The DNA Fingerprint Act, 2005. As it relates to the United Kingdom, see Section 61, Police and Criminal Evidence (amendment) Act, 2017. See also section 56 of the Criminal Justice and Public Order Act, 2017 (as amended) and section 117 of the Serious Organized Crime and Police Act 2005

[27] Federal Rules of Evidence, 2017 (as amended).

[28] (0:17-cr-50572) 5 Cir. U.S. CA

not be sure. Later that day, police obtained a warrant and arrested Moon. The next day, the victim viewed a line-up and identified Moon as the rapist after all the subjects were required to put on hats like the one worn by the perpetrator.[29] After trial by jury, Moon was convicted of rape and sentenced to seventy-five years in prison. Instead of flying fighter jets, Moon sat in prison for the next seventeen years teaching himself the law and the science of deoxyribonucleic acid (DNA) evidence because he knew that he had to fight for his innocence. As a result of his rape conviction, Moon lost his friends, his girlfriend, and his dreams. While Moon's friends were going on dates, buying homes, and getting promotions, Moon wilted away in prison: youthful innocence robbed from him. After his conviction, Moon filed motions to have the DNA testing of the semen samples. In 1989, Moon's motion for DNA testing was granted and the results conclusively excluded him as the source of the semen. Though Moon was excluded as the perpetrator, the sample was never compared against samples from the victim's husband or her son. Moon petitioned the courts to allow additional testing on the collected samples, but the court denied his request citing the laboratory's inability to determine if any other male DNA was found. Moon continued to proclaim his innocence, but it was not until 2001 that Moon found new hope. That year, the El Paso Public Defender was appointed to represent Moon. With the help of his attorney, the court required additional DNA testing. The results excluded Moon as the contributor on all samples. The laboratory found two new male profiles, one located on the comforter where the assault took place and one located in the victim's bathroom. Both samples contained a mixture of the victim's DNA and that of an unknown male. In 2004, the victim's ex-husband was located and consented to a DNA test which confirmed that he was the contributor of the semen located on the victim's comforter. Further review of the results in 2004 indicated that the victim's son was not a contributor to the samples. That left the profile on the robe, a profile that factually could not have been left by Moon.[30] In December 2004, Brandon Moon was exonerated and officially released from prison in 2005 after the DNA tests proved his innocence.

Earl Washington, Jr. v. Commonwealth of Virginia[31]

Earl Washington, a mentally challenged black man, was convicted of rape and murder in 1982. Washington was sentenced to death and just days before his execution, was released because of DNA evidence. Critics of the conviction argued that police officials took advantage of Washington because he possessed an IQ of 69 when he confessed to the crime. Because of his condition, Washington liked to please other people. On many occasions, when Washington was told the correct answer to a question, he would later repeat it, regardless of whether he understood or not. Washington's confession reflected these characteristics. Other major factors in Washington's case were ineffective counsel, issues of race and politics, and an inadequate post-conviction review. In 1993, the Court of Appeals of Virginia ruled that Washington's confession would stand. The court reasoned that even though Washington was denied his Sixth Amendment constitutional right to effective assistance of counsel because defence counsel failed to introduce exculpatory biological evidence, the result was harmless. At this desperate point the parties agreed to DNA testing on the biological evidence. The DNA test revealed that the semen did not match Washington's DNA. But despite the new evidence, Washington was faced with a new challenge. Under Virginia law, a defendant only has twenty-one days after sentencing to present new evidence.[32] With this new evidence presented just days before Washington's scheduled execution, Governor Wilder changed Washington's status to life imprisonment. Washington remained in prison for six more years until Governor Gilmore granted Washington a complete pardon for the capital murder conviction in 2000.

---

[29] Barbara Novovitch, "Free After 17 Years for a Rape That He Did Not Commit, Phoenix Cop watch" available at http://members.tripod.com/phoenix_copwatch/mud/policenews/cw1122.htm Accessed 9th October, 2018

[30] *Ibid*

[31] 323 S.E.2d 577 (1984)

[32] Inside Out Documentaries, Testing DNA and the Death Penalty with Anthony Brooks, Fatal Flaws: The Case of Earl Washington available at http://www.insideout.org/documentaries/dna/thestories3.asp accessed 19/7/18

Kirk Noble Bloodsworth v. State Of Maryland[33]

In 1984, a nine-year-old girl was found dead in a wooded area, having been sexually assaulted, strangled, and beaten with a rock. Bloodsworth was arrested based on an anonymous call telling police that he was seen with the victim that day and an identification made by a witness from a police sketch shown on television. The description of the perpetrator was a 6 feet, 5 inches tall white man with curly blond hair, a bushy mustache, skinny, and tan. Bloodsworth was six feet, had red hair, and was well over 200 pounds. At trial, five witnesses testified that they had seen Bloodsworth with the victim. However, two of these witnesses had not been able to identify Bloodsworth during a line-up but had seen him after the crime was committed on television. Though there was no physical evidence connecting him to the crime, in 1985 Kirk Noble Bloodsworth was convicted of the murder and sexual assault of a nine-year-old girl and was subsequently sentenced to death.[34]

On appeal, Bloodsworth's conviction was overturned by the appellate court two years after his original conviction and he was retried and was then sentenced to two life terms as against the original death sentence. Later in the early 1990s, Bloodsworth learned about DNA testing and the opportunities it could provide to prove his innocence and subsequent exoneration. In 1992, the prosecution after much ado finally agreed to DNA testing for Bloodsworth's case. The victim's shorts and underwear, a stick found at the scene, and an autopsy slide were compared against DNA from the victim and Bloodsworth. The DNA lab determined that testing on the panties excluded Bloodsworth and replicate testing performed by the FBI yielded the same results. Upon this overwhelming evidence, Bloodsworth was exonerated and released from prison in June 1993 and pardoned in December 1993. He had spent almost nine years in prison, two of those years facing execution.

State Of North Carolina v. Ronald Junior Cotton[35]

Twice in July 1984, an assailant broke into an apartment, severed phone wires, sexually assaulted a woman, searched through her belongings, and took money and other items. On August 1, 1984, Ronald Cotton was arrested for these crimes. In January 1985, Cotton was convicted by a jury of one count of rape and one count of burglary. In a second trial, in November 1987, Cotton was convicted of both rapes and two counts of burglary. An Alamance County Superior Court sentenced Cotton to life plus fifty-four years.

The prosecutor's evidence at trial included a photo identification made by one of the victims, a police line-up identification made by one of the victims, a flashlight found in Cotton's home that resembled the one used by the assailant, and rubber from Cotton's tennis shoe that was consistent with rubber found at one of the crime scenes.

On appeal, the North Carolina Supreme Court overturned the 1985 conviction because the second victim had picked another man out of the line-up and the trial court had not allowed this evidence to be heard by the jury. In November 1987, Cotton was retried, this time for both rapes because the second victim decided that Cotton was her assailant. Before the second trial, a man in prison, who had been convicted for similar crimes, told another inmate that he had committed the crimes for which Cotton had been convicted. A superior court judge refused to allow this information into evidence, and Cotton was convicted of both rapes. The next year, Cotton's appellate defender filed

[33] 307 Md. 164 (1986)
[34] Timothy Eckley, Law Versus Science and the Problem of Eyewitness Identication, Judicature, January-February 2006, at 230
[35] 351 S.E.2d 277 (1987)

a brief but did not argue the failure to admit the second suspect's confession, and the conviction was affirmed.[36]

In 1994, the chief appellate defender requested that two new lawyers take over Cotton's defence. They filed a motion for appropriate relief on the grounds of inadequate appeal counsel. They also filed a motion for DNA testing that was granted in October 1994. In the spring of 1995, the Burlington Police Department turned over all evidence that contained the assailant's semen for DNA testing.

The samples from one victim were too deteriorated to be conclusive, but the samples from the other victim's vaginal swab and underwear were subjected to PCR based DNA testing and showed no match to Cotton. At the defence's request, the results were sent to the State Bureau of Investigation's DNA database, containing the DNA patterns of convicted violent felons in North Carolina prisons. The state's database showed a match with the convict who had earlier confessed to the crime.

When the DNA test results were reported in May 1995, the district attorney and the defence motioned to dismiss all charges. On June 30, 1995, Cotton was officially cleared of all charges and released from prison. In July 1995, the governor of North Carolina officially pardoned Cotton. He received $110,000 after serving 10.5 years of his sentence.

***State v. Charles*[37]**

On March 12, 1981, a 26-year-old white female nurse was walking along a road near Houma, La., looking for help after her car broke down when she was accosted and raped by a black man. He grabbed her by the neck and dragged her from the road to the side of some buildings. He punched her in the face, bit her, and ordered her to take off her pants, stockings, and underwear. He raped her and repeatedly choked her and hit her head with a pipe. After the rape, she ran away and was picked up by a police officer, who took her to Terrebonne General Hospital and then went to look for the perpetrator.

On March 12, 1981, a 26-year-old white female nurse was walking along a road near Houma, La., looking for help after her car broke down when she was accosted and raped by a black man. He grabbed her by the neck and dragged her from the road to the side of some buildings. He punched her in the face, bit her, and ordered her to take off her pants, stockings, and underwear. He raped her and repeatedly choked her and hit her head with a pipe. After the rape, she ran away and was picked up by a police officer, who took her to Terrebonne General Hospital and then went to look for the perpetrator.

At the time, Clyde Charles, a black 27-year-old shrimp fisherman, was leaving a bar in Houma, La., where he had been with his brother Marlo. The police officer spotted Clyde, whom he had seen hitchhiking just an hour before the rape and had ordered off the road. He picked up Clyde and brought him to the hospital where the victim identified him as her assailant.

Clyde was tried by an all-white jury of 10 women and two men. The prosecution's evidence included the victim's identification and her testimony that the rapist called himself "Clyde." A criminalist testified that two Caucasian hairs on Clyde's shirt were microscopically similar (but not conclusively identical) to hair from the victim's head. The police officer testified that Clyde had been wearing a dark jogging jacket with white stripes when he saw him outside the bar, corroborating the victim's description of her assailant's dark jogging suit with stripes. The officer also testified that Clyde had

[36] What Jennifer Saw: Examining Eyewitness Errors in Crimes and How DNA Evidence is Setting the Innocent Free, Robert Cotton available at http://www.pbs.org/wgbh/pages/frontline/shows/dna/cotton/summary.htm accessed 12/7/18

[37] 511 So.2d 1164 (La. App. 1 Cir. 1987)

been wearing a red cap and blue jacket tied around his neck when he saw him hitchhiking. A red baseball hat and blue jean jacket were found near the scene of the rape. On June 22, 1982, the jury found Clyde guilty of aggravated rape. He was sentenced to life in prison at Louisiana's State Penitentiary at Angola.

Clyde appealed his case twice, in 1982 and 1987, and lost. Then in 1990, when he learned about DNA evidence, he and his sisters Lois Hill and Rochelle Abrams began writing letters requesting a test of the evidence in his case. For years, their requests were ignored, blocked, or denied by state and federal officials. Charles and his family kept writing, however, and eventually The Innocence Project took his case.

The state, under tremendous pressure from The Innocence Project and with media attention from frontline, finally granted Clyde post-conviction DNA testing in May 1999. The results of the test eliminated him as the perpetrator of the crime, and he was released on Dec. 17, 1999. Four months later, his brother Marlo was arrested after DNA tests implicated him in the rape of the nurse. (Marlo is now in Angola, the same prison where Clyde spent nearly 18 years.)

John Davis v. State of Mississippi[38]

Petitioner was convicted of rape and sentenced to life imprisonment by a jury in the Circuit Court of Lauderdale County, Mississippi. The rape occurred on the evening of December 2, 1965, at the victim's home in Meridian, Mississippi. The victim in this case identified her ex-boyfriend as the man who put a pillow over her face and then violently raped her. The victim was positive that she had gotten a clear view of her attacker. The case looked straightforward for the prosecution because Davis had a history of abuse with the victim and his only defence was his mother's testimony that he had been at home sleeping at the time of the attack. Subsequently, the DNA test revealed that Davis was innocent. The actual perpetrator was someone who resembled Davis.

Chukwudi Ugwanyi v. Federal Republic of Nigeria[39]

The appellant in this case who was arrested on the 16th day of November, 2000 was charged before a Federal High Court for the unlawful possession of 26 kilograms of Indian hemp also known as *cannabis sativa*, a narcotic drug similar to cocaine and heroin and thereby committed an offence contrary to and punishable under section 10H of the National Drug Law Enforcement Agency(Amendment) Act No. 15 of 1992. The appellant entered a no guilty plea, led evidence without calling any witness or tendering any document. Two witnesses who are both officers of the National Drug Law Enforcement Agency testified for the prosecution. Salient among the exhibits tendered by the prosecution are twelve wrapped sellotaped bundles recovered from the appellant, certificate of testing analysis and request for scientific aid. The exhibit on the drug analysis report turned out positive; indicative of the fact that the dried leaves in the appellant's luggage is Indian hemp. The appellant was thereafter sentenced to fifteen years imprisonment.

Dissatisfied with the judgment, the appellant lodged an appeal in the Court of Appeal, Sokoto Division. The court had no difficulty in confirming the judgement of the trial court. The appellant further appealed to the Supreme Court and the major ground of appeal was whether there was evidence before the trial court to prove beyond reasonable doubt that the substance allegedly recovered from the appellant was indeed Indian hemp also known as *cannabis sativa*, a narcotic drug similar to cocaine and heroin. The court before giving its judgement observed that *the laboratory issues a report which can either be positive or negative. It is that report the prosecution acts on to prove its case against the suspect or allow him to go home if the report is negative*.

[38] 394 U.S. 721 (89 S.Ct. 1394, 22 L.Ed.2d 676)

[39] (2012) LPELR-SC.190/2010. See also the case of *Shonubi v. People of Lagos State* (2015) All FWLR (pt. 801) at 1424, 1432 to1433 where forensic evidence was the evidence that determined the case.

The Supreme Court[40] on Friday, the 23rd day of March 2012, held that both the trial court and the court of appeal were right in holding that the prosecution discharged the burden placed on them by law and the appellant did not put in place what could have dented the case established by the prosecution. The appeal was accordingly dismissed.

Conclusion and Recommendations

It can be safely said from the foregoing that forensic evidence is very important in our criminal justice system. The benefits of forensic evidence in exonerating the wrongfully convicted victims will continue to grow relative to developments in science and technology as it makes a great difference in the criminal justice system. The use of forensic evidence holds promise for all prospects in the criminal justice system. It helps to convict the guilty, exonerate the innocent as well as resolve unsolved crimes. This in sum, end up promoting fairness, confidence, and justice in the administration of laws due to its reliability.

The above Nigerian case clearly shows that forensic test is that which determines the fate of the accused precisely. Where the scientific report says that an accused person is not tied to the commission of an offence, so be it. Such a person is exonerated from it at once. No wonder in the case of *Chukwudi Ugwanyi v. Federal Republic of Nigeria*[41] it was pointed out that where the laboratory report analysis turns out negative, the accused/suspect is allowed to go home. This reveals that forensic evidence has exonerative capacity.

In United States for example, since 1989, there have been tens of thousands of cases where prime suspects were identified and prosecuted, until DNA testing (prior to conviction) proved that they were wrongly accused.[42] As of October 2018, an alarming number of 362 men and women have been exonerated (released from prison) by forensic DNA after their wrongful convictions in United States.[43] Brandon Moon[44] for example was the 154th post-conviction DNA exoneration in the United States.

It is therefore recommended that the enabling laws of the land; section 68 of the Evidence Act[45] and section 30 of the Police Act[46] be amended to expand and put priority on the use of forensic evidence in view of the obvious lapses other forms of evidence possess. Courts should also lay emphasis on the use of forensic evidence in deserving cases to be sure/certain of the outcome of their justice administration. It is then and then only the painstaking problem of innocent victims wrongfully convicted daily can be put to an end as forensic evidence can clearly exonerate the accused persons instead of been allowed to suffer for what they know nothing about.

---

[40] Per Walter Samuel Nkanu Onnoghen JSC (as he then was) with leading judgment delivered by Bode Rhodes-Vivour JSC

[41] *Supra,* n. 39

[42] Innocence Project, DNA Exonerations in the United States available at https://www.innocenceproject.org/dna-exonerations-in-the-united-states accessed 25th September, 2018

[43] *Ibid*

[44] *Supra* n. 20

[45] 2011

[46] 1943, Cap P19 Laws of Federation of Nigeria, 2004