



E30 The Innocent Rapist: The Story of a Prosecution-Led Exoneration

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After attending this presentation, attendees will understand how re-submitting a “negative” rape kit during backlog testing produced an “uploadable” DNA profile, which in turn led to an exoneration.

This presentation will impact the forensic science community by illustrating how a “negative” rape kit in a closed case yielded important results when it was swept up in a “fork lift” backlog testing project, and provides a road map for a fast and efficient prosecution-led exoneration when the results proved the wrong man was in prison.

On March 19, 1991, in upper Manhattan, a 15-year-old girl was attacked by a man who followed her into the elevator of her building, then dragged her onto the roof and brutally raped her at gunpoint. After reporting the crime and giving a detailed description of her assailant, the victim stayed with friends and did not return home for three months. On the date of her return, she saw Michael Mercer outside the building, recognized him as her attacker, and called for help. Neighbors held him for police.

The sexual assault evidence kit was tested, and the vaginal, oral, and anal swabs were negative for sperm. Even the slides retained by the hospital were tested, with the same results. While there was no forensic evidence to corroborate the victim's identification of Mercer, some details did match—the defendant admitted to being in the building on the date of the rape, visiting a friend who lived on the same floor the attacker pressed, and said he recognized the victim as a girl he rode with in the elevator. He also fit the detailed physical description given by the victim. Mercer was convicted after trial and sentenced to 20.5 to 41 years. From prison, Mercer repeatedly requested post-conviction DNA testing, but those requests were denied since the kit results were negative.

In 2003, his kit was part of the NYPD backlog project, which employed a “forklift” approach and tested every kit in storage, even those from closed cases. This time, one of the four swabs in the kit tested positive for sperm, a profile was developed and uploaded to CODIS, where it hit to Arthur Brown, a convicted rapist.

Prosecutors were notified of this “hit” on Wednesday, May 14, 2003. First, it was confirmed that the convicted offender samples from Mercer and Brown were collected in different prisons and developed on different days, so there was no possibility of mix-up. The victim was contacted, who had become a police officer, and determined Brown was not a consensual partner. A DNA swab was taken from her, tested, and confirmed that results were the same as initial testing. This proved the integrity of the kit and contents were intact and had not become comingled with other evidence over the years.

The victim was shown a photo array containing both Mercer and Brown and she identified Brown as her assailant. She recognized Brown immediately as the real rapist and also understood that she had misidentified Mercer. Prosecutors drafted a motion to dismiss and sent detectives to the prison in upstate New York where Mercer had spent 12 years. On Monday, May 19, 2003, he was brought into court and the charges against him dismissed. Five days from the date of the DNA match, Mercer was a free man.

Learn why initial testing was negative, the victim's reaction to her mistake, what the Manhattan DA's office did for Mercer, Mercer's reaction to events, what Arthur Brown had to say for himself, and why Mercer's court-appointed attorney was extremely happy.

Backlog, Exoneration, CODIS