



F18 Posthumous DNA Analysis Proves Equivocal Bitemark Analysis

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The goal of this presentation is to remind attendees that not all high-profile post-conviction DNA analyses result in exoneration of the convicted person.

This presentation will impact the forensic science community by serving as a cautionary tale by recalling the facts around a case where the bitemark and palm print evidence used to secure a conviction in a capital murder trial might be considered equivocal, but, ultimately, post-conviction and posthumous DNA analysis showed the conviction was not improper.

In July 1989, Jesse Joe Patrick broke into the home of a neighbor, 80-year-old Nina Rutherford Redd, through a bathroom window. Redd was sexually assaulted before having her throat slashed. Patrick ransacked the home before leaving and was later arrested in Mississippi. A blood-soaked sock was found in the home of Patrick. DNA matched the DNA in Redd's blood sample. Patrick's live-in girlfriend identified the knife found at the scene as theirs. Patrick confessed to the crime shortly after his arrest, but later recanted. Patrick had previously been convicted of aggravated assault in 1986 and sentenced to four years probation, which was later revoked.

Patrick was convicted of capital murder in the 282nd District Court of Dallas County and sentenced to death on April 16, 1990. His conviction and sentence were affirmed by the Texas Court of Criminal Appeals on June 28, 1995, and his petition for *writ of certiorari* was denied by the United States Supreme Court on March 25, 1996. Patrick also filed a state *habeas corpus* application, which the Court of Criminal Appeals denied on April 22, 1998.

Patrick then filed a federal *habeas* petition, which the district court denied on Aug. 23, 2000. After the district court disposed of several post-judgment motions filed by Patrick, he attempted to appeal to the United States Court of Appeals for the Fifth Circuit, but both the district court and the Fifth Circuit denied him a certificate of appealability to do so. He then filed a petition for *writ of certiorari*, which was denied by the Supreme Court on September 12, 2002. Patrick's motion for a stay of execution was also denied on Sept. 12, 2002.

In addition to his appeal and *habeas corpus* proceedings, Patrick filed a motion for DNA testing in the state trial court. Although sperm had been found on the victim, a DNA analysis had not been performed. Following a hearing, the trial court ruled that Patrick was not entitled to testing under Chapter 64 of the Texas Code of Criminal Procedure because there was no reasonable probability that favorable DNA results would have led to an acquittal—Patrick had not been charged with a sexual assault.

Since Patrick was willing to pay the costs of DNA testing, the court did rule he could have testing at his expense. The State appealed that ruling to the Court of Criminal Appeals and also filed a petition for *writ of mandamus* to force the trial judge to rescind her order. On September 11, 2002, the Court of Criminal Appeals dismissed the State's appeal but also granted the requested *mandamus* relief. The court held that because Patrick did not meet the statute's requirements, he was not entitled to testing regardless of whether he was willing to bear the costs. Jesse Joe Patrick was executed by lethal injection on Sept. 17, 2002.

Craig Watkins was elected Criminal District Attorney for Dallas County in 2006. Mr. Watkins promptly established the Conviction Integrity Unit at the Dallas DA's office in 2007, the first of its kind in the country. This Unit is responsible for the post-conviction review of more than 400 Dallas County cases in conjunction with the Innocence Project of Texas (IPOT) and in accordance with the Texas Code of Criminal Procedure, Chapter 64 (Motion for Forensic DNA Testing). In addition to the IPOT project, the Conviction Integrity Unit investigates and prosecutes old cases (DNA and non-DNA related) where evidence identifies different or additional perpetrators.

Dallas County has been at the forefront of testing and retesting DNA evidence from old criminal cases. One important reason for this, it is believed, is that the Southwest Institute of Forensic Sciences in Dallas has historically been very diligent about retaining and properly storing evidence—evidence that might well have been discarded in other jurisdictions.

Patrick's case was one of the initial 400 Dallas cases selected for review for potential DNA testing/retesting of biological evidence. The review was by IPOT student volunteers supervised and directed by the Conviction Integrity Unit's attorneys. The initial IPOT volunteers participating in this project were primarily from Texas Wesleyan University's School of Law. Even though Patrick had been executed in 2002, his case was nonetheless included in the initial 400 cases because it met a threshold screening criteria of apparently having suitable biological evidence still available for testing. As his case was being investigated by the law students, it was discovered that the physical evidence that had been admitted at trial—a palm print analysis and a bitemark analysis—might be considered equivocal by some, and it was decided to proceed with a DNA analysis of the remaining biological evidence (*please note: the original bitemark analysis was not performed by any current Diplomate of the ABFO or member of AAFS*).



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Ultimately, results of DNA analysis of the sperm found on the victim's body "could not exclude" Patrick as a potential DNA contributor. It is left to wonder "in the end, did we arrive at the correct result, but by the wrong route?"

Bitemark, DNA Analysis, Postconviction