



F32 Passing *Voir Dire* and Avoiding Cross- Examination: A Follow-Up Case Report

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The goal of this presentation is to show how the forensic odontologist must be able to defend in court whatever forensic evidence was promulgated by established methodology.

This presentation will impact the forensic science community by encouraging forensic odontologists to be aware of the techniques involved with being an expert witness.

This case was used as an example of proper coding techniques presented at the American Academy of Forensic Sciences' Annual Scientific Meeting in February 2009, by Dashkow, Fontana, and Dondero. This is a follow-up presentation to highlight the litigation techniques used especially in preventing a possibly devastating cross-examination experience.

In July of 2008, skeletonized remains were discovered in a wooded area adjacent to the Southern State Parkway, in Nassau County, New York. A preliminary estimate based on the extent of decomposition and local climate conditions fixed the time of death at six to eight months. Initial examination by a forensic anthropologist was that the remains were of a Caucasian female approximately twenty-eight to thirty-two years of age. A forensic pathology examination determined a cause of death to be by "blunt force trauma" to the skull resulting in numerous fractures of the cranial structures. Most significant was a fracture extending from the left frontal-parietal suture across the frontal bone through the right orbital ridge. The New York State Police could not find any missing person from this period to match this individual.

Initial forensic dental examination revealed an intact maxilla with all sixteen teeth present. Several amalgam restorations were noted. Seven digital periapical radiographs were taken and a clinical dental chart was produced. Teeth numbers seven and nine were subsequently removed for DNA analysis.

The intact yet disarticulated mandible was then examined. All teeth were present except for numbers twenty-three, twenty-four, and twenty-six, which appeared to have been lost through postmortem evulsion. Several amalgam restorations were also noted to be present. What was noted immediately was the presence and full eruption of both third molars as well as an impacted supernumerary "fourth" molar located distal to both third molars. Seven digital periapical radiographs were taken and a clinical dental chart was produced.

The State Police investigator was notified of the uniqueness of the decedent's dentition. The investigator contacted the New York State Dental Society which agreed to send an email to its members asking if anyone had possibly examined a patient with such a dental anomaly. Dr. Frank Pappas received the email and forwarded it to a New Jersey colleague, Dr. Sheila Dashkow. Dr. Dashkow recalled entering a missing person's dental information with similar characteristics into the database and contacted the New York State Police investigator who forwarded this information to Dr. Henry Dondero. Dr. Dashkow emailed a copy of the missing person's panoramic radiograph and a tentative identification was made. Several days later, the original radiograph was brought to the Nassau County Medical Examiner's Office by the State Police where the identification was confirmed and an affidavit of Dental Identification was completed.

In April 2010, Dr. Dondero was notified by the Bergen County Prosecutor's Office was notified that testimony would need to be required in this case. This case was mainly circumstantial in nature and the forensic evidence overwhelmingly corroborated the prosecution's assertions. The prosecutor was concerned that the defense would be highly critical of all the forensics. In preparation for trial, the procedures for dental identification were reviewed as well as Dr. Dondero's *curriculum vitae* which was anticipated to be scrutinized in *voir dire*. During opening statements, the defense postulated that the forensics were faulty because of the time difference between the approximate date of the crime, October 2007, and discovery of the remains, July 2008. Even the circumstances surrounding the identification would be questioned.

At trial, the prosecution spent considerable time reviewing many details contained in the *curriculum vitae* before making a motion to have the testimony accepted as an expert witness, which he was without objection. In describing the identification process every procedure was explained in detail and the prosecution asked very pointed and probing questions. Antemortem and postmortem radiographs of every restoration were compared and shown to the jury. The pedigree of the original radiographs was documented as well as the unique search for the missing person record. No cross-examination was forthcoming and all dental evidence was accepted.

***Voir Dire*, Cross-Examination, Litigation**