



F24 The New Standard: The New York State Experience Post-Sean John

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After attending this presentation, attendees will learn who is an appropriate DNA expert witness to call at trial after a *Crawford* challenge and what information to elicit on direct examination.

This presentation will impact the forensic science community by illustrating the challenges in preparing a DNA expert for trial and presenting the evidence without violating the basic tenets of the Sixth Amendment.

In April 2016, the New York State Court of Appeals handed down a four-to-three decision in *People v Sean John*. In this case, the defendant was involved in a fight outside his home during which it was alleged he pointed a firearm at a neighbor. When the police arrived to the scene, another neighbor informed the police that they had observed the defendant enter the common area of the basement with something in his hand. The officers entered the basement and found a box which contained a loaded 9-millimeter handgun. The victim in the case later identified that firearm as the same one that the defendant had pointed at him earlier in the day. That firearm was swabbed by the New York Police Department (NYPD) Evidence Collection Team, and the buccal swabs were submitted for DNA testing.

During the trial, the People called the assigned criminalist who signed the DNA reports to testify to the DNA testing and the match to the defendant's DNA profile. The Court of Appeals held that such practice was a Sixth Amendment Confrontation Clause violation because the People introduced the DNA reports, which implicated the defendant into evidence using one expert who was permitted to "parrot" the recorded findings that were derived from other criminalists' casework. The Court held that an analyst who witnessed, performed, or supervised the generation of a defendant's DNA profile, or who used his or her independent analysis of the raw data, but not merely a testifying analyst functioning as a conduit for the conclusions of others, must be available to testify at trial. The Court did clarify that not every analyst who has contact with the evidence must testify at trial, rather just one individual who has analyzed the raw data and electropherogram edits and comes to his or her own, independent conclusion as to the results. A DNA laboratory that uses a multiple-analyst model may now need to modify their standard operating procedures so that a single analyst is qualified to testify as to the DNA profile testing. For example, an analyst who generated the DNA profile from one sample may also observe the final stage of testing or retesting involved in the generation of the other profile or comparison.

The decision in *People v Sean John* reflects a sharp deviation in standard practice for prosecutors who commonly call the assigned criminalist to testify at trial. The holding poses significant challenges for lawyers and criminalists alike as it calls into question who exactly is the appropriate expert to call at trial and what level of detail must be elicited on direct examination. This decision will require experts to dedicate more time in preparing for direct examination by extensively reviewing the raw data, bench notes and edit sheets, as well as the post-edit electropherograms created by other criminalists before testifying at trial.

Reference(s):

1. *The People of the State of New York, Respondent, v Sean John, Appellant*. 26N.Y.3d 1101 (2016).

Litigation, Expert, Sixth Amendment