



F15 “Not Suitable for Comparison” Almost Sends the Wrong Man to Prison

Brian J. Walsh, JD*, Office of Cook County Public Defender, 69 W Washington, 17th Floor, Chicago, IL 60602

The goal of this presentation is to review a case in which a strict interpretation decision that a DNA mixture was not suitable for comparison ignored the presence of usable data that corroborated the defendant’s innocence.

This presentation will impact the forensic science community by informing attendees of the need for full disclosure of the facts, bases of conclusions, and limitations on those conclusions.

This is a case in which the defendant was charged with murder, based on the statements of an eyewitness naming the defendant as the shooter.¹ Relevant physical evidence included a baseball hat that fell off the shooter’s head as he fled. The first round of DNA testing at 15 loci plus a gender marker developed results at 14 loci plus gender. The lab concluded there was a mixture of at least two people, the number of contributors could not be determined, and the mixture was potentially incomplete and not suitable for comparison.

Defense investigation found an alternate suspect who had admitted to others that he had committed the murder.

A second testing of the hat was ordered with comparison to the alternate suspect. Testing was again performed at 15 loci and gender and results were developed at all loci. The same conclusion was reported: a mixture of at least two and that the mixture was potentially incomplete and not suitable for comparison.

Subsequent to a request for disclosure of the case file and supporting data, defense review of the data found good, reliable data that could be examined. Based on the data reported, there was evidence to exclude the defendant as a contributor and to include the alternate suspect as a possible contributor to the baseball hat.

The third-party confessions of the alternate suspect were hearsay statements and not ordinarily admissible at trial. The United States Supreme Court has recognized that Due Process rights to a fair trial and the defendant’s right to present a defense will override the hearsay prohibition at times when the statements can be shown to be reliable.² At a pretrial hearing, those statements were presented along with a DNA report tendered by the defense that the defendant was excluded and the alternate suspect was included as a contributor to the hat. After the court had ruled that some of those statements would be admissible and before trial commenced, the State decided not to prosecute (*nolle prosequere*), effectively dismissing the case and allowing the defendant to be released.

A straightforward reading of the state’s lab reports would have left the defendant with no physical corroboration of the alternate suspect’s statements. The report wording that the mixture was not suitable for comparison fails to inform the legal practitioner that there may be good, reliable data that may be used for the defense. The recent National Commission on Forensic Science made various recommendations to the Attorney General, including recommendations on pre-trial discovery and documentation, case record, and report contents.³ These recommendations are a beginning to address potential pitfalls caused by the failure to adequately consider the defense position. Labs are also urged to consider implementing procedures to reconsider the interpretation decisions or to flag the concerns in the report when presented with other viable interpretations.

Reference(s):

1. *People v. Dwayne Ford*. 12 CR 14551, Circuit Court of Cook County, Illinois.
2. *Chambers v. Mississippi*. 410 U.S. 284 (1973).
3. *Reflecting Back-Looking Toward the Future*. National Commission on Forensic Science, April 11, 2017.

Actual Innocence, Due Process, DNA Interpretation