



F17 Post-Conviction Relief: The Many Errors Leading to a Miscarriage of Justice

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After attending this presentation, attendees will better understand why discovery and review of DNA testing data pre-trial are critical and how a litany of errors by the prosecutor and expert witnesses led to the inaccurate presentation of DNA test results, resulting in the conviction of an intellectually disabled man in a capital murder case.

This presentation will impact the forensic science community by providing information regarding the significant efforts needed post-conviction to seek justice for a defendant after a “worst-case scenario” of multiple events occurred at trial, including discovery violations, inaccurate demonstratives depicting the DNA test results, and expert witnesses’ testimony that misrepresented the significance of the DNA results.

Kenneth Simmons was convicted and sentenced to death in 1999 for the murder and sexual assault of an elderly woman in Summerville, SC. The trial conviction resulted from grossly misleading DNA testimony, lack of adequate scientific review of the DNA testing for the defense, and encouragement of errors by an overly zealous prosecutor.

Simmons’s death sentence was commuted to life imprisonment in 2014, based on a judicial finding that he is intellectually disabled. The Supreme Court of the United States ruled in *Atkins v. Virginia* in 2002, after Simmons’s trial, that persons with intellectual disability cannot be executed.¹ On June 23, 2017, Simmons was also awarded a new trial, 18 years after his original conviction, based on a judge’s finding that multiple errors in the State’s presentation of DNA evidence caused him to be “severely deprived of his due process rights.”

The evidence offered by the prosecution to secure Simmons’s original conviction included only two items: the now-debunked DNA evidence and a confession obtained after multiple non-recorded interrogations during which Simmons (whose intellectual disability is now established) falsely confessed to other crimes before ultimately confessing to the murder. A judge recently ruled that the State’s DNA evidence was false, confusing, misleading, and inaccurate because the State presented a DNA chart that contained fabricated results. Moreover, the State withheld material evidence, including the fact that a second round of DNA testing did not incriminate Simmons and was inconsistent with the original DNA results, and gender-typing test results indicated no male DNA was even present in the evidentiary samples, among other things.

The first serious examination of the DNA evidence presented at trial was conducted at the request of post-conviction counsel in 2005. Although the initial defense expert noted a number of problems with the DNA evidence, the post-conviction judge was uninterested and initially denied any further live hearings on the subject. In recorded depositions, the State’s trial DNA experts refused to acknowledge many of their errors and instead maintained that their original testimony was largely accurate and any errors they committed were insignificant.

To address this apparent “battle of the experts,” two additional experts examined the DNA case records. The primary findings, submitted in a joint affidavit in March 2011, not only agreed with the first defense appraisal of the DNA testing, but found numerous additional issues such as undisclosed gender-typing test results, additional unreported results, and the laboratory’s failure to use a reagent blank control. Subsequently, the post-conviction relief judge agreed to hear their testimony, but persisted in ignoring the serious concerns of the DNA experts. Simmons was finally awarded a new trial after the state supreme court remanded the DNA issues back down to the post-conviction judge.

The reversal of the conviction required 18 years, three defense attorneys, three well-qualified DNA experts, five hearings, and a state supreme court ruling to undo the original damage. This presentation will detail the flawed legal and scientific issues that contributed to the original conviction and ultimately produced the order for a new trial for Kenneth Simmons.

Reference(s):

¹ *Atkins v. Virginia*, 536 U.S. 304 (2002).

Post-Conviction Relief, Misrepresentation of DNA, Expert Review of Testing