



F1 A Jurisprudential Analysis of the DNA Exam and Its Use as Evidence in Decisions of Brazil's Superior Court of Justice

Maria Eduarda A. Amaral, Porto Alegre, Rio Grande do Sul 90619-900, BRAZIL; Nereu J. Giacomolli, Porto Alegre 90619-900, BRAZIL*

Learning Overview: The goal of this presentation is to evaluate decisions of Brazil's Superior Court of Justice and to try to identify the importance given to the DNA exam as evidence in the decision.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by serving as a study about the scientific evidence and the DNA exam. This presentation will also initiate a discussion about the distance between the speech of different science areas and will examine the importance of collaboration and interdisciplinary communication.

A case law search was conducted on the website of the Superior Court of Justice on July 11, 2018, using the keywords "laudo pericial E DNA E penal" (the search was made in Portuguese).

Ten judgments were analyzed. The totality of the cases involved crimes of rape and/or indecent assault. In one case, the defense argued that it would be necessary to perform a DNA exam to prove the convicted person's ascendancy toward the victim. In this case, the magistrate understood that it would not be necessary to perform DNA, since the victim was adopted, and an ancestry also assumed in such cases. In another decision, the defense alleged that the collection of DNA occurred in an illegal manner and that the evidence would be unlawful. However, the magistrate understood that the DNA test was not the only element of evidence and that the collection was not illegal. In another decision, the defense requested the annulment of the judgment due to the lack of DNA evidence, and the magistrate understood that there was sufficient evidence and a DNA exam wasn't necessary. Furthermore, prior to the updating of the Brazilian Criminal Procedure Code conducted in 2008, it was necessary that the report be carried out by two official experts. At that time, appeals went to the Superior Court of Justice asking the validity of the expert report because it was not conducted by two official experts, and their qualifications were in question. In most of the decisions, report irregularities were not recognized or corrected. Thus, the reports were not used.

There is no consensus on the subject. The DNA exam is sufficient and robust evidence to support the decision for some judges. Others believe that more evidence is needed. Regarding the defense, it is noticeable that the DNA exam is highly defended or neglected depending on the importance that it may have for the defense. There is not a more rigorous assessment of the scientific method used to do the DNA exam.

The DNA exam was designed to be used in the medical science area and, over time, has been incorporated into the forensic sciences. However, legal writers frequently discuss about the methodology used in the DNA exam, including the collection process and handling, without deep knowledge about it. They question the accused's fundamental assurances and how the DNA exam could affect it. Thus, a discussion between both areas is extremely important so judges can understand what the DNA exam can be used for and what the limitations are regarding application to the law. In addition, forensic scientists will be able to realize that, although its technique is approximately 99.9% reliable, it will not always be used.

DNA Exam, Forensic Science, Penal Process Evidence