



F17 I Didn't Get It Wrong: Prosecutorial Denial in the Face of Forensic Evidence of Innocence

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Learning Overview: After attending this presentation, attendees will understand case examples in which the prosecution continued to vigorously defend the validity of convictions despite post-conviction forensic evidence showing innocence. This presentation will also cover the trend of prosecutors pursuing endless appeals or offering plea deals even when innocent petitioners have been successful in the courts.

Impact on the Forensic Science Community: The presentation will impact the forensic community by serving to identifying a trend in the law enforcement and prosecutorial communities to dismiss evidence of innocence and maintain tunnel vision in re-examining old cases. Several case examples will be discussed.

“These two bastards are guilty. I just can't prove it” –Jefferson County Assistance District Attorney Arthur Green, commenting on the exonerations of Ronnie and Dale Mahan.¹ And yet, if one cannot prove guilt, how can one be so confident they are, in fact, guilty?

It was 1998. Her body was lying on a pile of rocks on the bank of a prominent local fishing hole. She had been strangled to death. Her bra had been pulled up, exposing one of her breasts. Yet there was no evidence of a sexual assault. She had no drag marks or other injuries, indicating she was not strangled at that location; rather, she was placed there. The desert heat beat down on her for four days until two fishermen found her. A piece of rope (the ligature) and a broken man's wrist watch were found among other debris at the scene. The hunt was on for whoever owned that watch and for whoever could have done this horrific act.

“That's my watch.” Those would be the fatal words of James Rogers during his police interview. James was a coworker of the victim and the two, although separately married, were having an affair. It would turn out that James was mistaken about the watch and he did produce a similar watch to the police, but it was too late. They caught their man. Or did they? Subsequent testing of the watch revealed the profile of the victim's estranged stepson, 19 years old at the time and accused by the victim of molesting her children. His father was going through a contentious divorce with the victim. Further testing and a hit in the Combined DNA Index System (CODIS) revealed a second perpetrator—the stepson's cousin's DNA underneath the victim's fingernail. These results have been known for years and, yet, James remains in prison.

James's case is not unique. Lawyers working in projects and offices dedicated to the release of innocent prisoners have faced backlash from law enforcement and prosecutors, even in the face of seemingly clear-cut forensic evidence of innocence. They have encountered the “unindicted co-jaculator theory,” meaning that unknown semen on a victim can be explained away by simply claiming that there must have been two perpetrators. They have encountered claims that male DNA on a rape victim's clothing must have come from the victim washing the clothing in the same washing machine as the person whose DNA is found on the clothing. They have argued contamination in the crime lab, DNA evidence having come from someone sneezing on the victim's clothing, 8-year-olds being sexually active, someone stumbling across a murder victim's body and engaging in acts of necrophilia. The list goes on. And when that all fails, they have even accused lawyers of planting evidence.

The root cause of prosecutorial denial of innocence has still not been adequately defined. Perhaps it is psychological. It has been said that “[w]hen we are confronted with evidence that challenges our deeply held beliefs, we are more likely to reframe the evidence than we are to alter our beliefs.”² Perhaps it is political. Perhaps both. Whatever it may be, it is a flaw in our criminal justice system that does not seem to be getting better.

Reference(s):

- ¹ Lara Bazelon. *Seventeen Cases of Denied Innocence*. *Slate*. January 10, 2018.
- ² Matthew Syed. *Black Box Thinking*. 2015.

DNA, Innocent, Prosecutor