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Re-Testing:

The Only Way To Be Sure...

- ? How can you be sure that the results of a forensic analysis relate to the specific item from your client, and that the wrong sample hasn't been analysed and reported?**
- ? How can you be sure that the analysis was carried out as rigorously as it should have been (especially when turn-round times and costs at prosecution laboratories are under pressure)?**
- ? Can you be sure that any minor peaks in a DNA profile have been thoroughly analysed and investigated?**
- ? If the item were to be re-examined and re-tested, could the peaks be enlarged and could their presence tell a different story from the prosecution's proposition?**

These are all questions that defence solicitors and barristers should consider seriously when examining the prosecution's forensic work. The results of re-testing have been shown on many occasions to support a completely different hypothesis than that presented by the prosecution.

Of course, most of the prosecution forensic science providers have ISO 17025 accreditation (due to police procurement programs) but this accreditation doesn't account for a number of factors that can make re-testing necessary. For example:

1. Human error, for example: wrong sample tested, contamination, incorrect analyses, insufficient or inappropriate examinations requested or performed, lack of sufficient work due to time pressures, inadequate report requested etc.;
2. Different providers may have different thresholds and reporting guidelines for their analytical results. It could be that re-testing and concentrating on minor components in the results may support the defence proposition or weaken the prosecution case;
3. The results of re-testing and re-interpretation may significantly affect the statistics linking the suspect with the incident.
4. Of particular concern to Forensic Access is the reliance on test results, even when provided by an accredited laboratory, if those results then go on to form a major part of the contextual evaluation in high profile cases.
5. We also see value in examining exhibits where the prosecution provider has not been instructed to examine them.

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Independent forensic science expertise helping
to deliver safe and sustainable evidence in court



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In these times of cost cutting, it is very likely that the police may only select a small number of exhibits from a larger pool within a case. In addition, due to time and cost constraints, only a small number of areas on an item may be tested and if this yields a “no result” it is likely that no further tests will be performed. The police screening of exhibits, in their own laboratories, is now growing – they are likely to select, for detailed analysis, the items which they believe will support their case. There may well be forensic evidence on the remaining items that supports the defendant’s version of events. It is important that the defence and the defence forensic scientist have the opportunity of seeing a full list of all exhibits in a case and then recommending a defence forensic strategy, which may involve examining and testing items or areas not previously examined by the prosecution.

Forensic Access is ideally placed to carry out re-testing work, with its own DNA-secure laboratories operating to ISO 17025 standards. Our scientists, of course, are some of the most experienced in the industry and can expertly assess whether a case would benefit from an exhibit(s) being re-examined and re-tested.

Case Example

Forensic Access was asked to assist the defence in a rape case. The complainant and the defendant were together during the evening, but the defendant stated he had not had sex with the complainant. However, the complainant’s DNA was found, in large quantities, on the swabs taken from the defendant’s penis. Transfer of the DNA could have occurred during sexual intercourse, or could have transferred from the defendant’s hands during a visit to the toilet. The prosecution scientist reported that there was “extremely strong” scientific support for them having had sexual intercourse. In his Statement the defendant said that he had washed his hands after being in contact with the complainant. This seemed to support the prosecution scientist’s assumption, as the defendant could not then have transferred the complainant’s DNA from his hands to his penis. The prosecution scientist had NOT analysed the swabs taken from the defendant’s hands.

Forensic Access, however, did perform DNA profiling tests on the swabs taken from the defendant’s hands. We found a large amount of the complainant’s DNA was present. Being presented with these new results, the prosecution scientist then changed his opinion to agree with that of our scientist which was that the DNA profiling results in the case didn’t support one version of events over the other.

To discuss the possibilities for re-testing or testing exhibits not previously examined, contact Forensic Access.

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