

DNA in the dock

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FARAH Jama could not breathe. Standing in the dock in a sterile courtroom of Melbourne's County Court, sweating in a suit he was not used to wearing, he was too ashamed to look at his mother.

The 21-year-old, who had not long finished his Year 12 exams after coming to Australia as a young boy from Sudan, could not comprehend that the jury foreperson had just read out the word "guilty".

After a seven-day trial, Jama had been convicted of raping a 40-year-old woman in the toilets at a suburban nightclub.

The only evidence linking him to the crime was a DNA sample taken from the woman's rape kit.

The woman had been found unconscious on the bathroom floor on a Saturday night in July last year, when Jama was 19. She could not remember what had happened to her.

A forensic examination revealed she had been raped. She later told investigators she had no recollection of Jama and had "not seen any men with black skin at the venue that night".

Jama had steadfastly denied the charge of rape and said he had never been to that nightclub, not on that cold Melbourne night, not ever. He repeatedly stated he was with his critically ill father on the other side of Melbourne, reading him passages from the Koran.

But the judge and the jury did not buy his alibi, despite supporting evidence from his father, brother and friend. Instead, they believed the forensic scientist who testified there was a one in 800 billion chance that the DNA belonged to someone other than the accused man.

This week Jama gave the lie to that absurdly remote statistic. After prosecutors admitted human error in the DNA testing on which the case against Jama was built, his conviction was overturned.

Prosecutors said they could not rule out contamination of the DNA sample after it emerged the same forensic medical officer who used the rape kit had taken an earlier sample from Jama in an unrelated matter. They admitted a "serious miscarriage of justice".

For Jama, the only statistic that matters now is the 16 months he spent in jail for a crime he didn't commit. The question his case raises for the broader criminal justice system is whether anyone should be sent to prison on the basis of DNA evidence alone.

For police, courtrooms, and jurors living in the CSI era, where police, prosecutors and judges regularly ask juries to trust the science of forensics, and particularly the infallibility of DNA, it is an awkward question.

This is especially so in Victoria, where the agency responsible for processing Jama's DNA sample, the Victorian Institute of Forensic Medicine, on Monday announced an inquiry into its DNA procedures.

On Tuesday, Victorian Premier John Brumby conceded the Jama case was a "serious concern" but defended the integrity of the DNA testing system used by authorities.

On Wednesday, the ground shifted further. Police Chief Commissioner Simon Overland called an urgent press conference to announce he had banned his forensic officers from giving any DNA evidence in court until the middle of January because of concerns about the interpretation of DNA evidence.

He said the statistical models they had previously used to interpret DNA could not keep up with the new and more powerful analysing technology introduced in September.

Then yesterday, Victorian Ombudsman George Brouwer handed down a scathing report into one part of the state's police forensic laboratory, the drug and alcohol unit, which found there was no effective case management system and the unit was plagued by problems.

Given these events, how much faith should we place in DNA?

According to University of Melbourne associate professor of law Jeremy Gans, significant problems with the use of DNA in criminal trials lie with the tendency of authorities to become too reliant on the forensic science as the best indicator of guilt.

"DNA evidence has always been much more reliable than other forms of evidence in criminal trials, like fingerprints, confessions and eyewitness testimony," Gans says.

"The problem is that it is not perfect but there's a temptation by police and forensic scientists not to worry about this slight chance that it could be wrong."

Gans says there were a number of red flags in the Jama case that should have been detected by authorities -- from the police who initially investigated the crime to the laboratory that handed over the positive DNA results -- and yet all went unnoticed.

He says the first alarming aspect was that the DNA samples in the investigation were taken by the same forensic officer at the same laboratory just 24 hours apart.

Jama's DNA sample was taken for another unrelated matter on July 14 and then the same person coincidentally took DNA from the woman found unconscious at the nightclub the next day.

"The big red flag on the DNA evidence in this case is the coincidence that the samples were taken in the same lab, by the same person and within 24 hours of each other," Gans says.

"When the police discovered that unexpected link between the two, they should have asked themselves whether the link was the lab and not the crime."

Gans says the other concerning element of the case was that there were no eyewitnesses to the crime -- including the alleged victim because she was unconscious -- and nobody saw Jama at the nightclub that night.

"The police may have been complacent about the DNA and so other factors in the case [such as witnesses] did not get looked at closely enough," he says. "Surely a 20-year-old black man is going to be remembered by someone in an over-28s nightclub."

Overland denies that his officers have become too reliant on the use of DNA in criminal cases.

"I am an old detective, my view was you got as much evidence as you possibly could, you never stopped. The more you had, the better off you were, so I would hope, and I don't believe that has changed," he says.

Overland believes the job of police is simply to collect evidence and hand it over to the Director of Public Prosecutions, and let courts and juries make calls on the strength or weakness of that evidence.

"The justice system we have is reliant on us collecting evidence, it's reliant on us presenting that evidence through the DPP and ultimately before the court, and it is for the courts to determine the guilt or innocence of those charged," he says.

"So it's really a matter for the courts as to what weight is placed on particular evidence and what decisions get made on people's guilt or innocence."

However, this view attracts the wrath of civil libertarians, who believe it is misleading for prosecutors to present cases built entirely on DNA evidence to jurors, especially given the unrealistic expectations of forensic science created by television programs such as the TV franchise CSI.

"Studies done in the US show what is called the CSI effect, where juries will consider DNA evidence a stronger form of proof over any other because of what is presented to them in the media," says Civil Liberties Australia director Tim Vines.

"But the quality of evidence you get from DNA is quite weak in some cases. You are also likely to have a reasonable chance that a sample has been contaminated or damaged."

He says other research found that up to 27 per cent of DNA samples were of poor quality but juries never heard figures such as these from the prosecution. He believes the prosecution should inform juries about the failings of forensic science, especially in cases where DNA constitutes the sole evidence.

"If the myth of the infallible DNA evidence is slowly eroded, this will help [avoid cases such as Jama's]," Vines says.

"But it's up to prosecutors to warn the juries about this because it affects them, too."

Gans has a different view: he believes the buck stops with the police and their forensic laboratories. He says that there should be stricter protocols that make it compulsory for police to examine other evidence more closely if DNA makes up the main part of their case. This could include retesting forensic material -- especially if it is the sole proof -- to make sure no mistakes are made.

"It's like mixing up babies in a hospital, it cannot be allowed to happen," he says of mistakes involving DNA.

"In a proper system, everyone should be taking responsibility."

Aside from the Victorian Institute of Forensic Medicine's review into the Jama case and the working party set up by Overland to look at more accurate statistical models to interpret DNA, there is also a national review, being conducted from the federal Attorney-General's office, on the way DNA is collected, used and stored across the country.

Whatever the outcome of these reviews into DNA evidence, it comes too late for 22-year-old Jama, who now wants to try and rebuild his life. He hopes to go to university and study project management and try to forget his stint in a jail cell in regional Victoria.

"He's been in custody for close to 1 1/2 years [for a crime] he didn't commit," Jama's lawyer Kimani Adil Boden said on Monday after his client had been acquitted. "Justice has finally been done, however, at a price."