



## Understanding the Role of DNA Evidence in a Sexual Assault Investigation: Part II

### *Case Example: Connecting a Series and identifying a Suspect with DNA*

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This training bulletin is the second in a [series](#) developed to explain the role of DNA evidence in a sexual assault investigation. Using a case example, I will seek to illustrate a number of points and place them within a historical context. This will hopefully lay groundwork for the best practice recommendations and future directions for reform to be outlined in the final installment of this series of training bulletins.

Note: This series is adapted from a collection of articles originally appearing in *Sexual Assault Report* (Volume 14, Number 3), published by the Civic Research Institute, all rights reserved.

### **The Case**

More than 13 women and children across five western states were raped and sexually assaulted by serial rapist James Allen Selby. This case of serial sexual assault offers an excellent example of why it is so important to submit forensic evidence to crime laboratories for analysis – with or without a known suspect – as well as submitting known suspect reference standards as soon as state laws allow. Making this point, however, requires looking back in time and tracing the history of the case. I have written this chronology so it unfolds the way it did from the perspective of those of us working in the Sex Crimes Unit of the San Diego Police Department at the time.

### **San Diego, California (July to September 2001)**

The San Diego Police Department Sex Crimes Unit investigated a series of four home invasions involving rape and sexual assault. The crimes were committed between July 1st and September 26th, 2001. All of the victims were adults, but they could not provide detailed information about the suspect because he covered their faces with different items (e.g., a towel, pillow, blanket). As a result, investigators knew that the case would most likely be solved with forensic evidence.

Fortunately, a forensic DNA profile was obtained from the vaginal swabs collected from each victim. Foreign DNA was also recovered from some toilet paper collected in one of the cases. Although the profile was submitted to the [Combined DNA Index System or CODIS](#), there was no match within the Convicted Offender Database.

Detectives Jack Knish and Dave Dolan were assigned to the series, and they worked hard to identify the suspect. The DNA profile linked all four cases together, but there were no viable leads to identify a suspect at the time. The detectives suspected that the assailant was a drifter. San Diego citizens wondered if and when the suspect would ever be caught.

#### **Tucson, Arizona (October 2001 to May 2002)**

Within days of the last San Diego assault, a serial rapist began terrorizing the citizens of Tucson, Arizona. The crimes were committed between October 2001 and May 2002, yet unlike the cases in San Diego, the Tucson series involved three adult women and one 13-year old child. In the case of the 13-year old, the suspect entered her home through a sliding glass door while her parents slept in the room next door. The suspect told the victim not to scream or he would kill her, but the victim did scream and the suspect fled, so the sexual assault was not completed.

In this Tucson series of sexual assaults, the suspect also covered the victims' faces so the information they could provide to describe him was extremely limited. Fortunately, foreign DNA was again located on the vaginal swabs from three of the victims. A foreign DNA profile was also obtained from the 13-year old, by swabbing her fingers.

The Tucson and San Diego series were linked together with forensic DNA profiles, but CODIS still could not provide the suspect's identity. Tucson Detective Mary Gehm and the detectives in San Diego compared investigative notes, in the hopes of developing a potential suspect lead. However, they were unsuccessful at the time.

#### **DNA Backlogs and Limited Resources**

Before proceeding with this example, it is important to note that most police departments had extensive DNA backlogs during this time period. Both then and now, only the largest police departments typically have their own DNA laboratories. Rather, most law enforcement agencies utilize the state crime lab, or – if they have the budget – they contract with private laboratories to conduct their DNA analyses and these services are costly. Thus, forensic resources are limited, and several units within the police department must compete to get their lab work done (e.g., sex crimes, homicide, robbery, burglary). Agencies using State and FBI laboratories may face even more competition to get DNA work completed, given how limited these resources are. As a result, most of the forensic evidence collected from crime scenes and victims during the time period of this case example simply remained in storage in police department property rooms, untested.

At the same time, states were desperately trying to keep up with the collection and analysis of reference standards that had to be obtained from incarcerated offenders before they were released from custody. The backlog was partly due to the shortage of resources, as previously described. However, it was also the result of changes in technology.

Around this same period of time, law enforcement agencies across the country began moving from one method of DNA testing (RFLP) to another (STR). RFLP stands for Restriction Fragment Length Polymorphism, and it was the first DNA profiling technique

that was widely used for law enforcement purposes. It is now largely obsolete. As the country moved to the new technology for DNA profiling, Short Tandem Repeats (STR's), profiles in the existing RFLP databanks were incompatible with STR profiles. In other words, law enforcement had to start over to build up their DNA databanks.

While this process was facilitated with the improved automation of DNA analysis, considerable staff resources were still needed to obtain reference samples from incarcerated offenders. Once the reference sample was obtained from an individual, the state also had to dedicate the crime laboratory resources needed to develop a DNA profile to submit to CODIS. As a result, it often took months or years for convicted DNA profiles to show up in the CODIS database – in order to match with DNA profiles developed from forensic evidence. The case example described here took place within the context of this desperate resource crisis.

#### **Cleveland County, Oklahoma (September, 1999)**

In August of 2002, investigators from Cleveland County, Oklahoma got a break. A DNA profile was developed from the evidence in a 1999 case that had plagued them for three years. The sexual assault occurred on September 16, 1999 in Norman, Oklahoma. The suspect reached through the bedroom window of a 9-year old victim to let himself in, gagged her with a sock, and carried her a few hundred feet to the nearby woods where he sexually assaulted her. The suspect fled when he heard the victim's mother searching for her daughter.

The young girl was unable to identify her attacker. Foreign DNA was found on both the victim's vaginal swabs and her underwear, but the profile could not be submitted to CODIS due to limitations at the time. The sample was shelved in the hopes that it would become useful in the future.

Detective Gerald Moody was assigned to the case, and he began his investigation by interviewing registered sex offenders in the area. As a result, he visited the victim's neighbor, who had a friend named James Allen Selby living with him. Investigators learned that Selby had been charged just one year prior with attempted sexual assault, aggravated assault with a deadly weapon, false imprisonment, and kidnapping in Marana, Arizona. However, he was acquitted on all the charges except for simple assault by a jury in Pima County.

During the trial in Pima County, Selby acknowledged that the sexual acts took place, but argued that the victim consented. This consent defense was successful, despite evidence documenting significant injuries sustained by the victim – on her head, wrists, and other locations.

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Cleveland County officials in Oklahoma attempted to get a DNA sample from Selby, but he fled before they could do so.<sup>1</sup>

In 2002, when the DNA profile from the evidence in Cleveland County was finally developed and submitted to CODIS, it matched with both the Tucson and San Diego series. Investigators once again began comparing notes. Oklahoma investigators advised their colleagues that the primary suspect in their case was James Allen Selby. In other words, the DNA match in 2002 confirmed that they had correctly identified the suspect three years earlier by checking for registered sex offenders in the area. Selby's name was run through the National Crime Information Center (NCIC) database and investigators learned that a warrant had also been issued for his arrest for a rape committed in Sparks, Nevada.

#### **Sparks, Nevada (April, 2001)**

On April 30, 2001, just a few months before the first assault in the San Diego series, a 12-year old girl was sexually assaulted in her apartment. Again, the suspect covered the victim's face with a pillow, towel, and comforter, and then raped her. Foreign DNA was found on the victim's vaginal swabs, but there were no matches in CODIS.

Detective Tom Miller of the Sparks Police Department conducted an investigation and identified the suspect as James Allen Selby, a maintenance worker at the victim's apartment complex. Selby failed to show up for work and appeared to have moved from his apartment in the same complex. The detective executed a search warrant on the suspect's apartment where he obtained the suspect's toothbrush and razor. A DNA profile was developed from this evidence, and it matched with the one identified from the victim's vaginal swabs. An arrest warrant was issued for Selby, but he could not be located.

As of 2002, when the case was matched with the others in San Diego, Tucson, and Oklahoma, none of the cases could be prosecuted because the suspect had not yet been located. Most important, *Selby's DNA profile was not uploaded to CODIS when the arrest warrant was issued because Selby's DNA profile was developed from evidence seized during a search warrant and not from a known reference standard.*

Yet even if they did have a reference standard for Selby, his DNA profile would not have been eligible for inclusion in CODIS – based on state laws at the time – because he had not (yet) been convicted of the crime.

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<sup>1</sup> Some of the information on this multi-state series was drawn from the *Cold Case Files: Episode #92*, entitled, *Manhunt*. The show aired on the History Channel, Monday, October 16, 2004.

#### **Note on Forensic DNA Profiles**

At the time, Selby's DNA profile could not be submitted to CODIS in the Convicted Offender Database. However, a forensic DNA profile could still have been submitted to the Forensic Database, *based on the evidence collected from the victim's vaginal swabs*. We will recommend this practice in a subsequent training bulletin. But then – as now – most police departments did not do this as a matter of routine practice.

Because of limited resources, many police departments do not submit forensic DNA profiles in cases such as this one to CODIS, based on the evidence that has been collected (e.g., from the victim's vaginal swabs), because they have already identified their suspect using traditional means (e.g., based on information gained from interviews, leads, and the list of registered sex offenders). Fortunately, the Sparks Police Department did submit this forensic DNA profile to CODIS, but the information was not available to law enforcement personnel in other agencies for over a year.

#### **Timeline Continued**

In August 2002, a warrant was issued for Selby's arrest in Oklahoma after the Cleveland County Sheriff's Department entered their case information from the 1999 assault. Last seen in Tucson on August 16, 2002, a massive multi-state search for Selby began. He was featured on the television program "America's Most Wanted." Flyers were posted in residence halls, bars, and garages warning the public that Selby was considered to be very dangerous and asking for any information that would help to apprehend him.

At the time, information had also emerged that led law enforcement to believe Selby was responsible for four additional sexual assaults in the Tucson campus area as well as ten other assaults in other locations. The charges issued in Arizona included not only sexual assault and aggravated assault, but also kidnapping and attempted murder for cutting the throat of one of his victims.

#### **Colorado Springs, Colorado (July 2002)**

At long last, Selby was arrested in September 2002 at a Veterans Affairs (VA) clinic in Colorado Springs, Colorado. In addition to the charges listed in the outstanding warrants for his arrest, the detectives who interviewed Selby also suspected that he might be responsible for an unsolved home invasion and rape of a 55-year old woman that occurred in July 2002 in Colorado Springs. DNA from the victim's shirt linked Selby to the Colorado Springs attack.

Selby was arrested and booked for rape on these charges as well. Not surprisingly, Selby claimed a consent defense in the Colorado case, stating that he and the victim "had a budding romantic relationship" that started weeks before after meeting at



Safeway when her grocery bag broke. Selby said he helped carry the woman's groceries three blocks to her house and that they saw each other at least four more times before she invited him into her bedroom on July 25, 2002 (Hethcock, 2003). As in the earlier trial in Pima County, Arizona, Selby raised a consent defense in his trial in Colorado Springs, acknowledging that the sexual acts took place but claiming that the victim consented.

This time, the jury didn't buy it. On September 15, 2003, they convicted Selby of the assault and he was sentenced to 20 years to life.

From Colorado, Selby was transported to Tucson, Arizona where he was tried on 27 felony counts. During the Tucson trial, Selby represented himself. This placed even more stress on his victims, because he was allowed to personally face each one and question them in court.

Selby was convicted in the Tucson trial on October 7, 2004. He was scheduled to be sentenced to life in prison the next day, but he hung himself from the window of his jail cell, just a few hours before the hearing. One of the two lawyers who prosecuted Selby, Micah Schmit, said that Selby's suicide fit his character: "It was an 11<sup>th</sup> hour cowardly act that deprived the community, deprived the victims (of a chance) to get their retribution." Schmit concluded that, "this is entirely in keeping with the controlling and narcissistic behavior of a serial rapist" (Teibel & Flick, 2004).

### **The Lessons and the Goal**

To learn the many lessons from this case example, keep in mind that the investigators in Sparks, Nevada identified a suspect in their April 2001 case fairly quickly – based on detective work rather than DNA analysis. The suspect's DNA profile was then obtained from evidence obtained during a search of his apartment (from his razor and toothbrush). This evidence was used to create a DNA profile for James Allen Selby that matched with the foreign DNA profile developed from evidence collected during the victim's medical forensic examination. A reference standard from the suspect was not available, however, because the suspect could not be located, arrested and prosecuted. Therefore, the suspect's identity could not be uploaded in CODIS – even though investigators knew that their primary suspect was James Allen Selby.

Investigators in Cleveland County, Oklahoma also identified James Allen Selby as the primary suspect in their September 1999 case. Again, this identification was based on detective work, rather than DNA analysis, and a DNA reference standard could not be obtained from Selby before he fled their jurisdiction. However, even if they had obtained a reference standard it would only have been used to compare with the forensic DNA profile developed from the evidence collected from the victim and her underwear. It would have confirmed that the person they suspected of committing the crime (James Allen Selby) was in fact the one who left biological evidence on the

victim's body and clothing. Based on state law at the time, neither the suspect's identity nor his DNA profile would have been entered in CODIS until after his conviction. And, depending on the state's resources, this might have taken years. Remember, states were rushing to obtain DNA samples from offenders who were scheduled to leave prison, rather than profiling individuals who had lengthy sentences ahead of them.

If this had not been the historical context for this case, it is possible that the subsequent assaults could have been prevented – not only the ones committed in the San Diego series, but also in Tucson and Colorado Springs as well. This is the goal we are striving to achieve today – to ensure that we have the forensic resources available to submit samples in all sexual assault cases and have DNA analysis completed promptly. We are much closer to achieving that goal, but there is still a great deal of work and education that needs to be done.

For example, there are still many law enforcement agencies whose officers have only limited knowledge of the many possible uses for DNA evidence, especially in a sexual assault case. Even in agencies that have such specialized expertise, they are often lacking the resources they need to get their lab work completed.

Another challenge is that many law enforcement investigators and medical professionals still focus exclusively on the issues of penetration, ejaculation, and semen. Yet the investigators in Tucson had the training they needed to recognize that DNA evidence could potentially be recovered from the body of their 13-year old victim – regardless of the fact that the sexual assault was not completed – by swabbing any location on her body that had contact with the suspect. (They obtained a foreign DNA profile by swabbing her fingers). Based on the specific assault history, they knew such evidence would be critically important in this particular case. This is exactly the kind of “out of the box” thinking that is required to solve and prosecute these difficult cases.

Other obstacles include common misunderstandings about the role of DNA in a sexual assault investigation and the backlog of untested DNA evidence. As we discussed in the first training bulletin in this series, there is a common perception that sexual assault cases proceed almost directly from “kit to court.” Yet investigators in both the Nevada and Oklahoma cases identified the correct suspect using good old fashioned detective work, rather than DNA analysis.

Moreover, they could not have successfully prosecuted their cases (such as the one in Colorado Springs involving the 55-year old victim) with DNA evidence alone, because of the consent defense. In that case, Selby acknowledged that the sexual acts took place, but claimed that the victim consented.<sup>2</sup> This series thus offers an example of how

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<sup>2</sup> The consent defense is not available in many states for sexual assault cases involving child victims, such as the 9-year old in this case example. As a result, DNA evidence can often be more critical

sexual assault investigations cannot proceed “from kit to court” without the type of evidence that can only be identified, collected, and documented with a thorough investigation. It is critical that this point is understood by victims, the public, and community professionals responding to sexual assault. Otherwise, people can be misled into thinking that the failure to prosecute most sexual assault cases can be solved by simply eliminating the DNA backlog and “testing every rape kit.”

### **Conclusion**

In this series of training bulletins, we hope to provide accurate information that is needed to clearly understand the history of DNA evidence and to recognize how it can be used to help successfully investigate and prosecute sexual assaults. I specifically want to emphasize the fact that the DNA backlog is not law enforcement’s “dirty little secret,” as so often portrayed in the media. The reality is that law enforcement investigators all over the country have been begging to have evidence analyzed that they collected from the forensic examinations of victims, clothing, and other crime scene evidence such as condoms, tissues, and bedding. (Although many law enforcement agencies do not routinely obtain forensic examinations for sexual assault suspects, this is a best practice that will hopefully be utilized more in the future and thus add to the evidence collected and tested.) Unfortunately, their efforts to have this evidence analyzed have often been thwarted by laws, technology, and resources – as clearly illustrated in this example of a multi-state series.

The truth is this: If law enforcement investigators did not think forensic evidence was valuable, many of these examinations would not have been conducted in the first place. This is clear, because most jurisdictions have historically required law enforcement officers to authorize a sexual assault victim’s forensic examination.<sup>3</sup>

The evidence from many of these forensic exams, as well as any crime scene evidence collected, could have been destroyed long ago, in accordance with specific criteria and guidelines such as statutes of limitations. Yet law enforcement investigators and administrators have allowed kits to stack up by the hundreds of thousands, in evidence

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in successfully prosecuting these cases, because the suspect cannot argue that the victim consented if the evidence establishes that the suspect committed the sexual act(s).

<sup>3</sup> This has changed in the wake of the forensic compliance provisions of the Violence Against Women Act (VAWA), as first enacted in 2005 and reiterated in the 2013 reauthorization. VAWA 2005 established that states and territories may not “require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both” [*Violence Against Women and Department of Justice Reauthorization Act of 2005*, Public Law 109-162, codified at U.S. Code 42, § 3796gg-4(d)]. Some states still have statutory requirements that medical forensic examinations will be authorized and paid for by the law enforcement agency with jurisdiction over the assault. Therefore, community protocols can vary for exams conducted with or without initial police involvement, as long as victims have access to a medical forensic exam without being required to personally report to law enforcement first (see Lonsway & Archambault, 2010).



## Training Bulletin

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storage facilities across the country – and supervisors have signed off, again and again, on property room forms to authorize their continued storage. The reason is because *they hoped the evidence would eventually be useful in solving and prosecuting these cases*. As law enforcement officers, we know that victims and their loved ones strive for closure, and many investigators have dedicated their lives to achieving this goal and holding offenders accountable for their crimes.

With this [series of training bulletins](#), I hope we can reach a common understanding of the challenges faced by law enforcement professionals and victims of sexual assault. Only then can we work together collaboratively, across professional disciplines, to provide the training and resources we need to live in a world where more offenders are held accountable and all of our communities are safer.

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