

December 28, 2005

Section: NEWS

Push to solve cold cases has benefits -- and costs

Richard Willing

Orlando police Detective Michael Moreschi cracks unsolved rape cases with 21st-century technology and old-fashioned pluck.

In 2003, Moreschi caught a rapist who had tried to avoid leaving evidence at a crime scene 1 1/2 years earlier by wearing two condoms and gloves, and by forcing his victim to bathe in a swimming pool after he attacked her. Moreschi ordered DNA tests on a condom package found at the crime scene.

The detective's hunch -- that the rapist had opened the package with his teeth -- was correct. Inside a barely visible tooth print, analysts found a DNA sample from dried saliva that matched Sonny Brooks, 31, a burglar whose genetic profile was in Florida's database of convicted criminals' DNA.

The rape victim was thrilled to hear the news, Moreschi says. But she told Moreschi that she did not want to be involved in prosecuting Brooks. Testifying in court "would have brought back the nightmare of her rape all over again," Moreschi says.

That led prosecutors to pursue a plea bargain, rather than take the case to trial. Last year, Brooks pleaded guilty and agreed to a 25-year sentence. If he had been convicted at a trial, he could have received a life sentence.

The Brooks case illustrates both the opportunities and the drawbacks of DNA testing in long-unsolved rape cases at a time when the Bush administration is pushing a five-year, \$755 million DNA initiative aimed at clearing tens of thousands of cold cases involving rapes, homicides and kidnappings. The plan aims to bring justice to victims, take violent criminals off the streets and identify cases in which a person may have been wrongly convicted.

DNA gives authorities unprecedented power to identify predators, but it also can awaken frightening memories, some decades old, in victims and their families. Testifying at a rape trial means that a victim's friends, family members and co-workers could learn for the first time that she was raped.

Even when victims are willing to testify, prosecutions can be blocked if statutes of limitation for filing charges -- often six years after the crime -- have expired. That can place a rape survivor in a painful position: learning that DNA testing has identified the name and criminal record of the man who raped her, and then watching helplessly as he goes unpunished.

"DNA is a wonderful thing, but the reality of what it does for victims is complex," says Susan Vickers, executive director of the Victim Rights Law Center in Boston. The non-

profit group has represented several rape victims in cases solved by DNA testing. "It comes with costs as well as benefits."

Working mostly with local funds, Florida and Virginia, two leaders in DNA testing, have solved nearly 1,000 rape cases by comparing genetic evidence from crime scenes with the DNA profiles of convicted criminals in databases kept by all 50 states and the U.S. government. The databases are linked by computer, allowing evidence from crimes in Kansas, for example, to be compared with profiles of convicts from Washington state.

The federal initiative takes aim at rape cases across the USA -- about 169,000, according to a 2003 study by Washington State University -- in which crime scene evidence has not been tested for DNA and compared with the databases. Some case files were less than a year old and some went back 20 years, but all had this in common: They languished in crime labs and evidence rooms after detectives failed to identify a suspect.

Vickers and other advocates for victims say the issues raised by DNA testing are likely to become more prominent as \$91 million in federal DNA testing grants -- the first installment of the Bush administration's plan -- begins to reach state and local crime laboratories in 2006.

Rape survivor Debbie Smith was among those who lobbied Congress for the DNA testing funds.

Smith, the wife of a police detective, was abducted from her Williamsburg, Va., home in 1989 and raped in nearby woods. Six years later, biological evidence from that rape matched the DNA profile of Norman Jimmerson, a James City, Va., man who was in the state's database of criminals' DNA because he had been convicted of abducting and robbing two other women.

At the time of the match, Jimmerson would have been eligible for parole in about two years. Smith agreed to testify at Jimmerson's trial. The decision, she recalled in an interview, was not easy.

Having her case solved, she says, churned up feelings she had gone through at the time of the rape: anger, guilt, depression and an "overwhelming sense of fear."

Her attacker "kept saying, 'I know where you live,'" Smith says. "I remembered that."

Jimmerson's trial tested Smith's commitment to the case. Among other things, Jimmerson's attorneys unsuccessfully challenged the scientific basis for DNA identification. The judge granted several motions that delayed the case.

Prosecutors, Smith says, suggested they might drop the rape charge and focus on an abduction charge, which they said would be easier to prove. At Smith's insistence, the rape charge wasn't dropped. And after 2 1/2 years of legal maneuvering, Jimmerson was convicted and received two life sentences -- one for the rape and another for the abduction -- plus 25 years in prison.

Smith says she has spoken with and e-mailed dozens of rape victims. Many, she says, ask her whether they should help police pursue their unsolved cases or decline to cooperate.

"For me, I had to (pursue Jimmerson's case), because he was going to get out," she says. "I couldn't ever have gotten over the fear that he would come back. But for everyone, it's their own decision."

Elation and disappointment

For Kellie Greene, badgering police to perform DNA tests on evidence from her rape helped catch her assailant -- but produced a bittersweet result.

Greene, of Orlando, was raped in 1994. She read up on DNA and says she made herself a "huge nuisance" to police by constantly requesting tests. However, because they often are short on funds and lab capacity, police departments in Florida and elsewhere typically used DNA testing only to confirm the validity of evidence against a known suspect, rather than to search DNA databases for leads to unknown suspects. President Bush's DNA initiative is intended to change that.

In 1997, DNA from Greene's rape was compared with the genetic profiles in Florida's database of convicted criminals. It matched David Shaw, who was serving a 25-year sentence for beating and raping another Florida woman six weeks before Greene was attacked.

Greene was elated. But three years later, while researching court records, she learned that Shaw had been allowed to plead guilty to her rape and serve his 22-year sentence at the same time as his first rape sentence. The plea agreement meant Shaw received no extra prison time for raping Greene.

Danielle Tavernier, spokeswoman for the Orlando prosecutor's office, did not return several calls seeking an explanation for the deal.

Greene remains troubled by the decision, which she says was like being "slapped in the face." She now campaigns for state laws that would ban such concurrent sentences. Florida adopted such a law in 2000.

Debbie Shaw, who was raped in 1986, had a different problem when DNA solved her case: the statute of limitations.

She was working as a volunteer for the Dallas Police Department in 2002 when she learned that the department still had the evidence kit from her unsolved rape. She says she had been told by hospital workers years earlier that the evidence had been lost.

Shaw was in luck. Dallas police had just begun a program to analyze evidence from unsolved rapes. They identified unknown rapists' genetic profiles and added them to Texas' database of felons' DNA.

Last February, authorities found a match to the DNA from the Shaw case: Johnny Ray Patton, whose genetic profile had just been entered into the database when he was convicted of burglary. More than 18 years had passed since Shaw had been attacked in her Dallas duplex.

Shaw got a letter from police, a copy of Patton's criminal record and his mug shot. Because her face had been covered during the rape, she says, it was the first time she had seen what her alleged assailant looked like.

Then came disappointment. Because Shaw's rape had occurred in 1986, Patton could not be prosecuted. A Texas statute of limitations prevents rapes from being charged, in most cases, if more than six years have passed since the crimes occurred.

Shaw says she was devastated. Pursuing the case, she says, had led her to confront bad memories she had believed were forgotten.

"Getting myself to the point where I could go through with (DNA testing), that was difficult," she says. "But it kept nagging me. I needed to know. Then to see him, to learn his name, and not be able to go forward ... it's hard to describe."

Since 2000, Texas and 24 other states have extended or eliminated the statute of limitations for sexual assaults and other crimes in cases in which DNA evidence is involved, says Lisa Hurst, researcher for DNAResource.com. The website tracks DNA's use by law enforcement in the USA and abroad.

However, rapists and others identified by the DNA databases continue to slip through the cracks. In October, Dallas police watched helplessly as a former Texan matched by DNA to two 1986 rapes was released from prison in Colorado after he served a one-year sentence for drunken driving.

"It's real bad," says Patrick Welsh, a Dallas police sergeant who specializes in sex-crime cases. "We can't even put it on his (criminal record)."

DNA gets convictions

When long-unsolved rape cases with new DNA evidence are prosecuted, they usually end with a conviction. A cold case unit begun by Manhattan District Attorney Robert Morgenthau in 2000 has obtained convictions in 58 of 64 cases with DNA evidence. Charges are pending in the other six. In Orlando, prosecutors have won 16 of the 17 old rape cases based on DNA that have been brought since 2001.

Meanwhile, changes in the legal definition of rape have made it easier to prosecute old cases, says Martha Bashford, a prosecutor in the Manhattan unit. To prove they were raped, victims once had to convince jurors that they put up an "earnest resistance" and that the rape could be corroborated by independent evidence such as abrasions, she says.

In New York, those requirements were removed by the state Legislature in 1982. Since the mid-1970s, all 50 states have adopted laws that keep an alleged rape victim's sexual history from being used against her on the witness stand, says Susan Howley, public policy director at the National Center for Victims of Crime in Washington, D.C.

"It's never pleasant to have to testify about being raped," Bashford says. Now, she says, it is less likely that the victim essentially will be "put on trial."

Kathleen Ham's case shows how things have changed. Ham, now 58, was raped in New York City in 1973 by an intruder who crawled through her window one night. She never saw his face.

Clarence Williams was captured nearby with items from Ham's home, and he was wearing clothes she had described to police. Jurors deadlocked at Williams' 1974 trial after his attorney asked pointed questions about Ham's sexual history and suggested that the rape actually was a transaction between a prostitute and her pimp. Ham was a tourist staying in a friend's apartment, not a prostitute.

Williams fled before he could be retried, and he wasn't captured until last February, 31 years later. At his retrial in November, DNA evidence linked Williams, now known as Fletcher Worrell, to the rape. Worrell, who also has been linked to 24 other rapes in Maryland and New Jersey through the DNA database system, was found guilty and sentenced to 46 years in prison.

The contrast between the two trials was dramatic, Ham says.

"In the original, it was just attack, just attack me," she says. "This one, (the defense lawyer) was almost polite. He spent most of his time trying to convince the jury not that this wasn't a real rape but that the DNA (match) was some kind of terrible mistake."

Ham, who had not heard from police since 1974, says she was stunned to learn of the match earlier this year. At first, she says, she was "terrified" to testify.

Now she's glad she did. "You can't help feeling a lot more confident when DNA (evidence) is there," she says. "DNA changes everything."