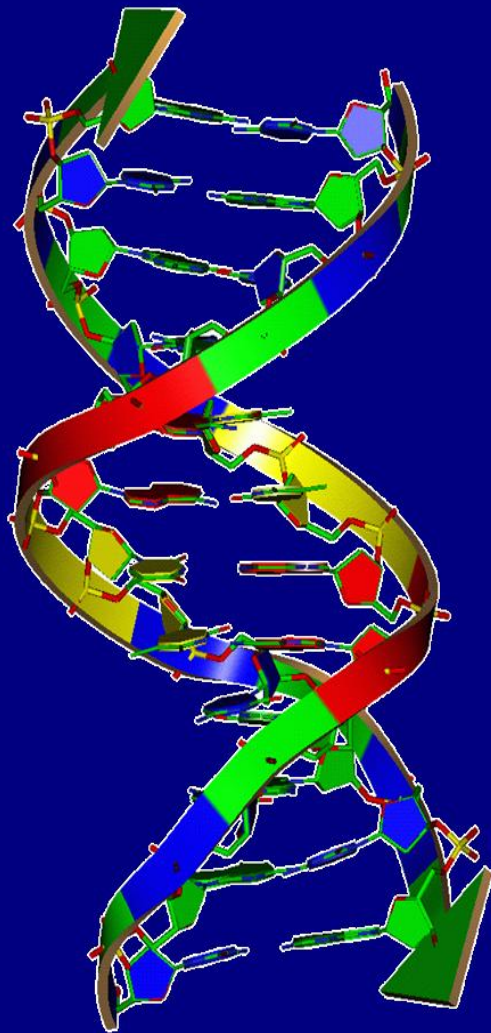


DNA EVIDENCE IN VIRGINIA



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Key Dates

- 1990 Admissibility established
- 1990 Databank established
- 1990 Felons' samples collected
- 1992 Laboratory analysis began
- 1993 1st Databank "hit"
- 2002 Formal post-conviction testing
- 2003 Arrestees' samples collected
- 2003 1st arrestee "hit"

Admissibility Standards



Spencer v. Commonwealth, 240 Va. 78, 393 S.E.2d 609 (June 8, 1990) (“Spencer IV”), *cert. denied*, 498 U.S. 908 (1990).

- Affirmed the admissibility of PCR DQ-Alpha typing utilizing the reliability standard.
- First time in U.S. that a state Supreme Court approved and validated use of PCR DNA typing in a criminal case.

The Emergence of DNA Databases



- 1990 - As a direct result of *Spencer*, Virginia was the first state in the U.S. to require DNA typing of all convicted felons. Chapter 669 (1990) (SB 130):
 - **DNA profiles admissible in criminal proceedings**
Va. Code § 19.2-270.5
 - **Blood samples for DNA analysis on conviction of any felony**
Va. Code §19.2-310.2
 - **Virginia DNA data bank established**
Va. Code § 19.2-31.05

The Emergence of DNA Databases



Satcher v. Commonwealth, 244 Va. 220; 421 S.E.2d 821 (1992).

Approved evidentiary provisions of Va. Code Section 19.2-270.5:

“In any criminal proceeding, DNA ... testing shall be deemed to be a reliable scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove the identity of any person.”

Development of “All Felons” Databases



Johnson v. Commonwealth, 259 Va. 654, 529 S.E.2d 769, *cert. denied*, 531 U.S. 981 (2000)

- The DNA statutes do not deny a criminal defendant any constitutional rights under the Fourth, Fifth, or Eighth Amendments, nor do they violate Due Process

Accord, Jones v. Murray, 962 F.2d 302 (4th Cir.), *cert. denied*, 506 U.S. 977 (1992).

Challenges to Admissibility



Hills v. Commonwealth, 33 Va. App. 442, 534 S.E.2d 337 (2000).

- No requirement exists to place the actual databases employed in statistical calculations into evidence.
- “In this case, the forensic science DNA database utilized to prepare the analysis was not prepared specifically for Hills’ prosecution, and it was of a type generally relied upon by DNA analysts.”

Inclusion of Arrestees



Arrestee Database went into effect on
January 1, 2003

- Chapters 753 and 773 (2002) (Senate Patron: William C. Mims) DNA analysis upon arrest for a violent felony. Va. Code 19.2-310.2:1

Particulars Relating to Arrestees



- Requires a saliva or tissue DNA sample to be taken from every person arrested for a violent felony.
- If the charge is dismissed or the person is acquitted at trial, the DNA sample must be destroyed by the Department of Forensic Science.
- Va. Code 19.2-310.2:1

Inclusion of Arrestees



Anderson v. Commonwealth, 274 Va. 469; 650 S.E.2d 702 (2007), *cert. denied*, 128 S. Ct. 2473 (2008).

- “Code § 19.2-310.2:1 is analogous to the taking of a suspect’s fingerprints upon arrest and was not an unlawful search under the Fourth Amendment.”

I AR INOSENT



TEST TEH DNA

Post-Conviction DNA Testing



Came into being in a formalized way
in 2001, effective Nov. 15, 2002

Chapters 873 and 874 (2001) (SB 1366
and HB 1311) *Writ* of actual
innocence.

Va. Code §§ 19.2-327.1 *et seq.*

Post Conviction DNA testing



Va. Code §§ 19.2-327.1 *et seq.*

- Establishes a procedure for a convicted felon to petition the circuit court that entered the conviction to apply for a new scientific investigation of human biological evidence.
- Must allege reasons that the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

The Washington Post



Thursday, December 15, 2005

Newly tested DNA from rapes committed more than 20 years ago has exonerated two Virginians who had each spent more than a decade behind bars, reigniting a national debate about post-conviction testing of biological evidence.

[Governor] Warner said the discovery of two innocent men among the 31 newly examined cases compels an even more sweeping review. He ordered that 660 boxes containing thousands of files from 1973 through 1988 be examined for cases that can be retested using the latest DNA technology. There is no estimate on how long that would take or how much it would cost.

Virginia's review marks one of the first instances in which a governor has ordered a broad examination of DNA cases and places the state at the forefront of a national debate over post-conviction DNA.

The Washington Post



DNA Tests Confirm Guilt of Executed Man

Friday, January 13, 2006

Modern DNA tests have confirmed the guilt of a Virginia man who had proclaimed he was innocent of murder and rape even as he was strapped into the electric chair and executed more than a decade ago, the governor announced yesterday.

The results stunned and disappointed those who have fought a 25-year crusade to prove that Roger K. Coleman was innocent. They also dashed hopes among death penalty foes that the case would catalyze opposition to capital punishment across the country.

Richmond Times-Dispatch



Attorney General's office joins push to clear man in rape

Thursday, June 1, 2009

Testing of sperm taken from the scene of the Jan. 3, 1984, rape did not find Thomas E. Haynesworth's genetic profile, but identified that of Leon W. Davis -- known as the "Black Ninja" -- a serial rapist serving seven life terms for other attacks.

Last month Haynesworth's lawyers filed a petition with the Virginia Supreme Court seeking a writ of actual innocence for Haynesworth. The petition states the probability that the DNA belonged to someone other than Davis is greater than 1 in 6.5 billion.

This week the attorney general's office responded to the petition by filing papers that conclude: "In light of this evidence, the commonwealth agrees that the writ should expeditiously issue and Haynesworth's conviction . . . should be vacated."

Critical Points Regarding Virginia's Databank



- Virginia was the first state to expand its databank to all felons (1990)
- DNA analysis of samples began in 1992
- Virginia's Databank reached 100,000 profiles in 1999
- Virginia's expansion to arrestees, covering specific felony arrests, went into effect in 2003. At the time, only Louisiana and Texas had arrestee provisions

Critical Points Regarding Virginia's Databank



- In 2004, based on a change in federal law, arrestee profiles were accepted in the National DNA databank
- Virginia recorded its 5,000th hit in 2008
- Virginia's databank now includes more than 290,000 convicted felon samples plus over 5,500 arrestee samples
- First arrestee hit occurred in 2003
- As of April, 2009, there have been more than 500 arrestee hits out of the over 5,500 total hits
- More than 20 Virginia arrestee hits in the National Databank

Example of Arrestee Hit



- Cold case arrestee hit:
 - Unsolved 1991 Fairfax County rape case, resubmitted in 2001 for DNA analysis – profile put into databank
 - Arrestee sample taken from individual arrested in 2003 rape in Stafford County, analyzed and put into databank
 - January 2004, arrestee hit took place, linking arrestee to Fairfax rape
 - Arrestee convicted of Fairfax rape

Example of Arrestee Hit



- Unsolved Sexual Assault:
 - 2007 Prince William County unsolved sexual assault case. Evidence entered into DNA databank. A suspect was submitted for comparison, but eliminated
 - In 2007, an arrestee in Manassas, charged with “entering a dwelling with the intent to commit a felony,” was entered into the databank
 - March 2008, arrestee hit occurred linking him to the 2007 unsolved Prince William County sexual assault case
 - Conviction obtained for that offense

Interstate Arrestee Hit



- The first interstate arrestee hit
- Unsolved 1997 rape, Queens, N.Y
- DNA entered into N.Y. State and National databanks – not hits
- In June, 2003, Virginia arrestee sample taken from individual charged with Breaking and Entering
- Until 2005, federal law did not allow state arrestee profiles in National database

Interstate Arrestee Hit



- This arrestee's profile was among the first batch of Virginia arrestee profiles uploaded in 2005 – immediate hit for Queens, N.Y. unsolved rape
- Information was provided by Virginia Department of Forensic Science to N.Y. City OCM lab
- Suspect was located in N. Y. City and arrested for the rape within 48 hours
- Tried and convicted in 2007

Questions?

