

YOUR LYING EYES

Poor witness ID + pressure to solve a crime = tragedy



By Julius (Jay) Wachtel. Inspiring stories don't often come around, so when the Orange County (CA) Register published the [first installment](#) of a two-part series on the exploits of a Santa Ana police detective, we curled up for a good read. Then he recoiled in horror.

No, we weren't horrified by the crime, terrible as it was. A man driving a black, shiny 4-door Cadillac picked up a prostitute. She was driven to a secluded place, forced to perform unspeakable acts, choked nearly to death, then for good measure thrown in a dumpster. Fortunately, she survived. Amazingly, she had memorized six digits of the car's license plate. Unfortunately, there was no match in the DMV database.

Why did our ears curl? In horror at the investigation. In [part two](#) of the series we learn that four months after the crime a Santa Ana patrol officer caught two men having sex in a Cadillac. Although the car was white, the license plate didn't match and the act was between members of the same gender, police placed a photo of the driver in a six-pack and showed it to the victim. Sure enough, she picked him out, and the man was arrested. At the preliminary hearing she nailed him again, this time in person. Despite the man's protests, the judge bound him over for trial based on her identification alone.

End of story? Thankfully, no. Three days later the DNA came back. There was no match. Although prosecutors don't necessarily dismiss cases under such circumstances -- after all, prostitutes can have multiple sex partners -- this time they did.

It's a good thing. Five years later the FBI's national databank spat out an alert that the DNA profile entered by Santa Ana police matched a DNA profile from a rape in a small Washington town. Police there had a suspect. He lived in Westminster, Calif., a city near Santa Ana. Our intrepid detective went to the man's house. Bingo! A black 4-door Cadillac. Bingo! Its license plate was nearly identical to what the victim reported. Officers followed the car until its driver discarded a cigarette butt, then pounced on the roach. Bingo! The DNA matched. Lock him up!

They did. Unfortunately, the suspect killed himself while out on bail. Case closed. What if there hadn't been DNA to exculpate the first guy? Can you say "wrongful conviction"?

Indeed, eyewitness goofs are the leading cause of wrongful convictions. DNA has made the magnitude of the problem all too apparent. For a classic example look no further than [Ronald Cotton](#), whose wrongful conviction for two rapes has become a case study in misidentification. (It took the innocent man eleven years to get out, but who's counting?)



Yes, there's a catch. Since a perpetrator's DNA is only present in about twenty percent of violent crime, most wrongfully convicted persons have to try to prove their innocence another way. And prove it they must: once a jury renders a verdict of guilty the burden shifts from the State to the defendant. Imagine how Rhode Island police detective [Jeffrey Scott Hornoff](#) must have felt when he was convicted for murdering his wife based on nothing more than lying about an affair. Hornoff spent six years in prison before the real killer, tortured by his conscience, stepped forward to confess. (The killer's brother had known all along but kept quiet.)

DNA aside, what can a cop do to reduce the risk of arresting the innocent? In the present example, the 20-year Santa Ana PD veteran spoke eloquently of his determination to find the prostitute's killer. "She was a righteous victim, and I felt bad

for her. If you read the police reports, you'd be sympathetic to her too, even if she was a prostitute.”

What's wrong with that? Detectives should be motivated by one thing alone: discovering the truth. Pressures from the boss or the public, desire for recognition, and yes, even sympathy for the victim can lead to hasty decisions and poor police work, with catastrophic consequences for innocent persons and for others who may be victimized because the actual perpetrator remains at large.

No one knows that better than [David Allen Jones](#). A mentally retarded man with an IQ of 62, he was talked by LAPD detectives into confessing to murdering four prostitutes in 1992. Although DNA recovered from the victims was not his, Jones was nonetheless tried and convicted under the theory that his DNA was masked by the DNA of the victims' other sexual partners. Nine years later, an LAPD detective working cold cases matched the four rape/murders attributed to Jones plus six more to another man already in prison for rape. Jones was freed and received settlements of \$720,000 from Los Angeles and \$74,600 from the State compensation board.