

Evidence based on DNA not cut and dried proof

Juries can be swayed by television crime dramas, writes **Daniel Matas**.

JULIE Szego's *The Tainted Trial* tells the story of Farah Jama, a young man who was wrongly convicted by a jury who were all too enthusiastic to unduly trust the DNA evidence despite there being not a shred of other evidence suggesting Mr Jama was anywhere near the crime scene.

It would appear that the jury in Mr Jama's case were acting under the phenomenon dubbed the "CSI effect", an unfortunate circumstance where jurors, largely influenced by the frequent viewing of popular crime television shows, blindly follow the DNA evidence despite the utterly improbable case theory put forward.

Mr Jama is not alone in this experience. Consider the following case where the balance of the facts on any plausible view appears similarly unlikely.

In 2001, Wayne Edward Butler was convicted for the 1983 murder of Celia Natasha Douty, whose bludgeoned naked body was found covered by a semen-stained beach towel on Brampton Island, North Queensland.

It was reported that Ms Douty, a known nude sunbaker, had died from a massive head injury caused by several severe blows to the head. Ms Douty had not been sexually assaulted.

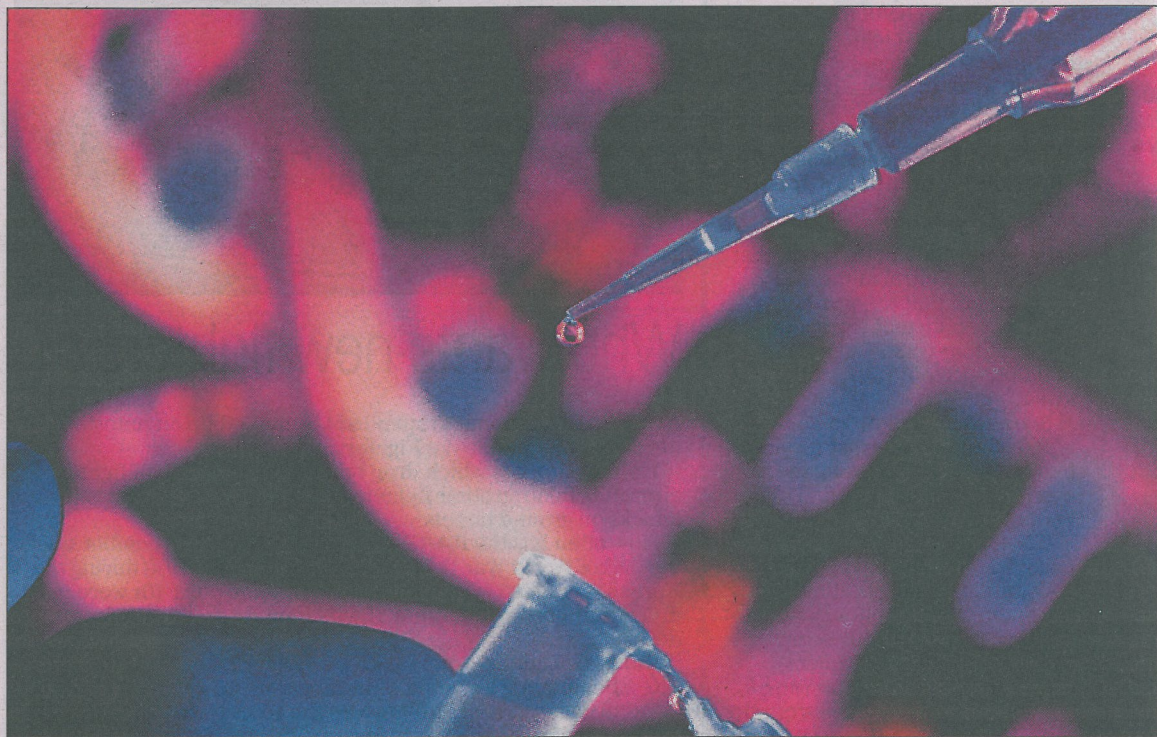
Investigations into the murder soon focused on the males among the 340 people who were known to be on the island at the time.

Mr Butler, a 40-year-old visiting Sydney businessman with no known history of violence, arrived with his wife the day prior to the discovery of Ms Douty's body.

When the police eventually spoke to him, he told them that he had never met the victim, knew nothing about the murder, and willingly volunteered blood and saliva samples.

Initially, he was ruled out as a suspect as his blood type (type B) did not match the ABO typing of the semen stains left at the crime scene (type O).

Ms Douty's clothing was never



MISPLACED FAITH: All DNA confirms is that an accused could be the offender, not that they are guilty.

found but a pair of thongs and a Makita brand cap that did not belong to the victim were found alongside her body.

It was later established that Mr Butler was wearing joggers and the cap did not belong to him.

In 1997, an inquest into the death of Ms Douty found that there was insufficient evidence for anybody to be charged with her murder.

In 1997, DNA testing was introduced into forensics laboratories. A decision was made to conduct further tests on the beach towel in an effort to extract DNA from the sperm.

This proved successful and was found to be a match to Mr Butler's blood sample previously provided.

He was subsequently arrested, charged and after an 11-day trial convicted of the murder of Ms Douty.

Like Mr Jama, a jury who deliberated for less than two hours and were most probably star-struck by the forensic evidence, convicted Mr Butler on the DNA evidence alone.

Without the DNA evidence, the prosecution had no case. Nothing else linked Mr Butler to the crime. There was no known motive, no confession, no witnesses and no other persuasive evidence.

Why would a successful middle aged businessman with no criminal history involving violence travel to Brampton Island on a day trip with his wife, brutally kill a female sunbaker whom he had never met, then cover her body with her own towel, stand over the body, masturbate and ejaculate onto the towel?

This hypothesis simply makes no sense but that was the prosecution's case theory.

On appeal, Mr Butler sought to cast doubt on the DNA evidence by suggesting that either a gross error had been made with the DNA testing procedure or that something more sinister had taken place during the laboratory testing.

These suggested shortcomings were nothing new for the forensic laboratory concerned, which had just endured a decade of

controversy involving allegations of dishonesty and a litany of proven incompetencies that included poorly documented case records and the unacceptable mislabeling of reference bloods.

More recently, additional laboratory records have been obtained that now cast further serious doubt on the DNA results in Mr Butler's case.

As part of its Justice Project, staff and law students from the University of Newcastle Legal Centre are drafting an application for a further appeal.

Juries need to exercise more caution and refrain from placing excessive trust and weight to DNA evidence, particularly in circumstances where the balance of the evidence remains unsupportive of guilt.

At its highest, all DNA proves is that an accused could be the offender, not that they are.

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