



By MIKE HOULAHAN - The Press | Tuesday, 16 December 2008

Judas sheep has followers and detractors

Scientific advances are turning the black sheep of a family into the Judas sheep.

New Zealand police have just obtained their first conviction through familial DNA testing - a controversial technique that sees scientists take samples from crime scenes and run them through DNA databases for full, as well as partial, hits.

A full hit means the test has found the likely offender. A partial hit means a family member or relative of the person with that match is likely to be the culprit.

Like the Judas sheep leading the rest of the flock to slaughter, that relative and their past criminal conviction could now send a kinsman to prison.

The breakthrough in forensic technology has seen police overseas solve long-standing cases through the misdeeds of others.

A British woman who gave a sample after a minor infraction unwittingly paved the way for police to arrest her brother, who had raped and sexually brutalised women for 20 years.

In the Christchurch District Court yesterday, the familial link led to Wayne Jarden pleading guilty to two rapes from 1988 and 1996.

Jarden's brother, Kevin Moana Jarden, was sentenced to preventive detention in March 2004 for sexual crimes involving several young girls.

Police expect to resolve other cases through familial testing, although they believe the technology will be used sparingly.

However, the science has lawyers and privacy advocates concerned.

They warn the technique could see innocent people from large families routinely questioned for the misdeeds of relatives. Because of adoption, they may not even know those relatives existed.

They also fear transfer of DNA - the inadvertent contamination of a sample with someone else's DNA -- could expose many innocent people to unnecessary scrutiny.

New Zealand police contract forensic work to the Crown-owned entity Environmental Science and Research (ESR), which has been able to carry out forensic familial DNA testing for just over a year.

Police national forensic services adviser John Walker said the technique had only been used in a small number of cases, and he believed the Jarden case was the first time it had proved successful in New Zealand.

"It's only a handful of cases where we would want to," Walker said.

"We're very mindful that we don't want to use and abuse that particular ability. We will only use it where

it's serious offending, often historical, where we haven't been able to find the offender, and there is a need to try every avenue."

Jarden broke into a St Albans house in 1988 and dragged a 27-year-old woman into her dining room, where he tied her to her table with strips of material cut from a duvet on the washing line. He then lashed her legs to the table using belts he found in the house, before raping her. During the attack Jarden tied a pillowcase over the woman's head with such force that she thought she would suffocate.

In 1996, Jarden knocked on the door of a 90-year-old woman's single-bedroomed council flat, told her that he was her grandson, and barged his way in. Despite the woman's pleas for mercy, Jarden raped the woman for several minutes before telling her not to tell the police.

The attack left Jarden's frail and elderly victim badly injured. She died three years after the attack.

Both crimes were on Christchurch police's list of the worst unsolved "cold cases", but it was not until DNA tests in 2000 that investigators knew they were done by the same man.

Jarden's DNA was not in police databases, meaning the cases remained unsolved until the development of familial DNA testing. A scan for partial matches in the database recorded hits on two of Jarden's relatives, meaning police could then pursue Jarden - a man who many years before they had considered as a possible suspect for the St Albans attack.

Yesterday, Jarden was remanded in custody for sentencing on April 3. He may be a candidate for preventive detention, a sentence reserved for the most serious offenders.

Civil Liberties chairman and Wellington lawyer Michael Bott said he had concerns about familial testing, and there needed to be a profound debate about its use before science ran ahead of society's views on human rights.

"There needs to be proper and due debate in a considered forum. There are a number of issues with familial DNA: not just the ethical issues, but there are a number of issues with forensic science and familial DNA. The worry is that if you haven't got an exact match, it's more of a guess, and what you have is a process of net-widening."

Bott is not alone in his concerns, and in both Britain and the United States doubts about the technique have been raised.

In Britain, where police have wider powers to collect DNA, fears have been raised that the state could move to hold a genetic record of every citizen, as well as visitors to the country -- a possibility human rights groups have called chilling.

In the United States, where some states have banned the use of familial DNA testing, a major concern has been one of race.

A Columbia Law Review article on the science says it is not "racially neutral", as disproportionately high arrest and conviction rates for African-Americans and Hispanics mean people of that ethnic background are more likely than other demographic groups to be added to databases, meaning innocent relatives are more likely to be investigated by law enforcement.

Bott said the science meant New Zealanders were becoming their brother's keeper.

"One of the great issues is that if the familial DNA process becomes accepted, if practised routinely, effectively you would be subjecting hundreds of New Zealanders innocent people who happen to be relatives of people in effect to life-long genetic surveillance."

The argument that if you had done nothing wrong you had nothing to fear was "the argument of Stalin

and Big Brother", Bott said.

"The state is snooping on you is the point. Potentially, until you are cleared, you are a suspect ... we are hocking off our civil liberties on the altar of law and order."

Walker said familial DNA testing was expensive and very manual and time-consuming, meaning police had restricted its use to serious offending where the crime was proportionate to the effort needed to secure a conviction.

"To be quite honest, it hasn't been particularly successful on the handful of occasions it has been used. There haven't been a handful of resolutions because it is obviously reliant on there being a family member in the database, and the database only has 1.5 per cent or thereabouts of the population of New Zealand in it. It's a very small database, so, while it is available to us, there are no guarantees," Walker said.

"It's not one that is going to be used in general investigative work, it's solely almost as a last resort-type situation where we see the need to resolve the crime because the nature of it is such that we have to look at that type of high-end work.

"It's not the first technique we'll use. It's something we'll try if everything else hasn't worked."

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