

DNA fiasco: rape conviction quashed

By Kate Hagan

December 8, 2009 — 12.00am

A RETIRED judge has been called in to investigate how a mix-up over DNA evidence led to a Melbourne man being wrongly convicted and jailed for rape.

Farah Jama, 22, spent 15 months in jail after a sample of his DNA contaminated one taken from a woman believed to have been sexually assaulted in the toilet of a Doncaster nightclub.



Farah Jama leaves the Court Of Appeal. *CREDIT: JOHN WOULDSTRA*

Victoria's Court of Appeal yesterday quashed his conviction after prosecutor Brett Sonnet admitted that a "substantial miscarriage of justice" had occurred in the case, probably due to a mix-up at the Victorian Institute of Forensic Medicine. The institute has asked retired Supreme Court judge Frank Vincent to investigate.

A County Court jury had rejected Mr Jama's protests that he had never been to the club or met the woman, and had been at home with his family in Preston on the night of the incident. Mr Jama was convicted of raping a 48-year-old woman found semi-conscious in the toilet cubicle in July 2006. The woman had little memory of the night and said she had not seen any men with black skin at the over-28s venue, but swabs taken from her vagina and containing semen were matched to Mr Jama.

Mr Sonnet said it was likely the DNA sample from the woman had been contaminated since the same forensic medical officer had taken a swab from Mr Jama's mouth in a separate investigation a day earlier. Mr Sonnet said the risk of DNA contamination had never been explained to the jury.

The case follows concern about methods used at the Victoria Police Forensic Services Centre at Macleod, which also conducts DNA testing.

The Age revealed last month that Victoria's Director of Public Prosecutions, Jeremy Rapke, QC, had ordered police scientists to retest all DNA evidence used in prosecution cases over the past five years due to concern that low-level profiles from suspects were unreliable. The problems have prompted the Law Institute of Victoria to warn of the dangers of convicting on DNA evidence alone. Michael McNamara, the institute's criminal law co-chairman, said: "People treat [DNA] as the be-all and end-all but you shouldn't run a prosecution based on one piece of evidence, particularly where there is such room for human error."

Opposition police spokesman Peter Ryan said the Jama case was "a stain upon the justice system in Victoria", adding that "the general picture of forensics" in the state was of great concern.

The director of the Victorian Institute of Forensic Medicine, Professor Stephen Cordner, said processes on which the institute relied might have resulted in contamination of swabs taken during an examination of the alleged victim.

But Professor Cordner said the "interpretation and utilisation of the results were not within the control of the [institute]". He added: "The contribution of any particular factor to the wrongful conviction is a matter of speculation at this point."

Victoria Police moved to distance itself from the case. A media spokeswoman said police were "aware a number of questions have been asked about [our] forensic services centre in recent weeks", but she stressed the institute was a separate organisation contracted to provide a service to police.

"Victoria Police is confident this is an unfortunate, one-off event," she said.

Mr Jama's lawyer, Kimani Boden, said he would pursue compensation for his client, who was sentenced in July last year by County Court judge Paul Lacava to six years' jail, with a minimum of four years.

The Court of Appeal released Mr Jama on bail on November 18 after Mr Boden took up the case and had him take another DNA test.

"Our scientist ... couldn't reproduce the result the Crown had," Mr Boden said. He said the Crown had retested the same sample and confirmed the original result, but could not account for its continuity.

Chief Justice Marilyn Warren and Justices Robert Redlich and Bernard Bongiorno agreed to the orders quashing Mr Jama's conviction yesterday.

Mr Jama said he was relieved at the acquittal but traumatised by his experience. "It was very horrible. You're always worrying about what's going to happen to you in prison," he said.

Now, he said, "I'm really grateful for the justice".

<https://www.smh.com.au/national/dna-fiasco-rape-conviction-quashed-20091207-kfc3.html>