

**FORENSIC EVIDENCE: PATH TO SUBSTANTIAL JUSTICE IN SEXUAL OFFENCES IN NIGERIA\***

**Abstract**

*The value of forensic evidence in criminal justice administration in sexual offences world over is tremendous, yet much of our criminal justice administration in Nigeria rely on oral evidence and medical reports that merely scratch the surface of the crime. Ensuring that innocent persons are not erroneously convicted for a crime requires more than oral evidence and medical report. Generation and admission of forensic evidence (FE) with almost mathematical science accuracy are of the essence if our criminal justice will be elevated from the place of intuition and judge's appreciation of evidence albeit jaundiced before him. Forensic evidence is the application of forensic science to trace elements and material evidence collected from crime scene and connected individuals to ascertain the perpetrator of a crime. While employing doctrinal methodology the work found that forensic evidence will bring the much-desired boost and credence in administration of criminal justice in sexual offences in Nigeria. Despite the challenges and criticisms of FE, it remains one of the surest ways of getting to near perfection in criminal justice administration where oral evidence and medical reports leave much to be desired.*

**Keywords:** Forensic Evidence, Sexual Offences, Substantial Justice, Nigeria

**1. Introduction**

One of the heinous crimes faced by humanity is sexual assault.<sup>1</sup> This being the case more is required in prosecution of alleged offenders of this crime than oral evidence and medical report usually relied upon by our courts. Sexual assault has moved beyond adults as victims. Children and young persons are now at the receiving end.<sup>2</sup> Considering the steep rise in the volume of sexual assaults and that much of it go unreported arising from our cultural background something more practical is required than oral evidence and medical report, that simply leave a lot to be desired leaving the judge with more doubt to grapple with. The world has advanced with forensic science and generation of forensic evidence. Forensic science in generation of forensic evidence is akin to mathematical science that leaves no room for doubt where the procedures are strictly followed to the letters barring human errors. Oral evidence is fraught with several challenges arising from circumstances that usually surround sexual assaults. These range from the fact that victim and offender are usually secluded from public view at the time of the alleged assault, the fact of use of threat against the victim, the possibility of violence and attendant trauma on the victim, confusion and or hallucination sometimes found in the victim, etc. The application of forensic science will eliminate these seemingly surmountable issues and identify the offender or exclude the alleged suspect either through DNA and or finger print profiling, etc. The collection of vaginal swab, anal swab, hairs, and blood stained materials where the latter is available and analyzing them through the use of forensic science will aid in identifying the offender and possible conviction of the right defendant.<sup>3</sup>

**2. Conceptual Clarifications**

**Medical Report**

What constitutes medical report in our jurisdiction is somewhat laughable. Usually, the medical report so-called is a *form-like-paper* given by the police to the victim or victim's representatives to be presented to the nearest government hospital. The medical officer is expected to report his findings after examining the victim.<sup>4</sup> This procedure did not take cognizance that there may be need to require an expert to examine and evaluate the victim. There is also no consideration that victim may require to be attended to by a psychologist before the medical examination may be undertaken, the age of the victim with regards to status of the medical examiner who is expected to conduct the medical examination is not taken into perspective, time of the incident and whether medical examination may still be relevant at the point of report of the alleged crime to the police, etc.

The Medical Report so called is a *form* given by the police to the victim or victim's representative to visit a government hospital with the investigating police officer (*IPO*). The intendment is that the victim will be examined by the medical personal, write his findings in the *form* and hand it over to the investigating police officer. The idea of the presence of the *IPO* is to ensure that a government hospital is visited, that a true report of the finding is reported,

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<sup>1</sup> Kaur et al. Medico-Legal Evidence Collection in Child sexual assault cases: a forensic significance. Egyptian Journal of Forensic Science (2021) 11:41 pages 1-6 @p.1

<sup>2</sup> Nigeria in response to these rising crimes has taken steps to enact the Child's Right Act and Violence Against Women Act. These laws encompass such offences as are being discussed in this paper.

<sup>3</sup> Sexual assaults vary from one jurisdiction to another. It hinges on non-consensual sexual acts as between adults only. Much of what sexual assault is has been basically avoided in this paper to focus on forensic evidence.

<sup>4</sup>We will confine ourselves to medical report that emanated after examination of the victim to buttress the laughable 'worthless' medical report allegedly presented by a medical practitioner.

and that the report is not doctored. The *IPO* who is not learned in medicine even if allowed inside the examination room may not be able to speak if the report handed to him is the actual report of the findings made. The *form* presents itself in this manner:

**Medical Report**

Formation:

Date	Name of Victim	Sex	Age	C.R.NO	Nature of Complaint	Doctor’s Report
.....	Miss Portal Beer	F	9	.....	Defilement	<i>The above named presented to our facility said she was forced into the bathroom &amp; defiled by Tiger Preston in their compound. Vaginal examination: intact hymen with bruises &amp; tenderness around vulva wall showing that attempt was made on penetration but was interrupted. Rvs, urinalysis, ...</i>

Name of Police Officer: ASP Scorpion Dick Force Number: XXX781120V6

Rank of the *IPO*: Inspector

Hospital Attended: General Hospital, Ewa

Dr’s. Name: Dr. Black Mamba.<sup>5</sup>

This is a typical medical report that eventually may not be able to help the judge take a decision whether the attempted defilement was by the suspect in the case. No further step was taken in this matter with regard to collecting blood stain materials if any, hair sample was not collected from the scene or from the body of the victim or suspect, there was no mention of collection of any material evidence showing seminal fluid stains, there was also no indication that the bathroom was visited by the *IPO* or medical examiner to check for any trace evidence, the cloth worn by Miss Portal Beer was not collected at the time of reporting the alleged crime or shown to have been collected thereafter, her under pant was also not collected. The cloths of the alleged offender were not collected or shown to have been examined either by the *IPO* or any other member of the team of the investigating police officers or medical examiner, the time the victim was presented at the hospital was not recorded, etc. This medical report in our view is obviously a worthless paper in relation to forensic evidence generation. The victim following whose medical examination the medical report was produced was later taken to another hospital for further examination following controversy emanating from the mother on the first medical report. The medical examination was carried out exactly 35 days from the date of the earlier medical examination. The later report reads as follows:

On examination it was observed that the hymen was torn, and there were bruises from 12 O’clock position up to 6 O’clock position of her labia minora as well as bruises from 7 O’clock position up to 11 O’clock position of the labia minora. These bruises were undergoing healing processes. In addition, the earlier report noted that the urino-genital system showed hyperaemia of the genital mucosa, a torn hymen. With reference to the above-mentioned medical findings, there was evidence of penetration by a blunt object.

Signed: Dr.

These two medical reports have not pointed in any direction to the identity of the suspect at all. Finger print evidence or blood or semen or vaginal swab after forensic analysis would have been very objective in producing forensic evidence that would have in fact proved suspect actually had contact with victim (albeit sexually). In addition, the two medical reports must fail authenticity test for non-presence of the *IPO* on the very two different occasions the medical examinations were undertaken.<sup>6</sup> Where the identity of the perpetrator is in issue the medical report cannot be of help in identifying the perpetrator. The detection of injury and biological material to support or exclude sexual

<sup>5</sup> This a true Medical Report from a live case except that the names have been changed for the purpose privacy of persons affected in the case. The cloths or at least the under pant of the victim ought to be presented to the police since the alleged incident took place in the bathroom.

<sup>6</sup>The two reports were made following an examination of the victim after a report of defilement. First examination was taken the same day the alleged incident took place while the later was 35days after the occurrence of the incident being investigated. In the first report there was no mention of a torn hymen or hyperaemia. First report stated that an attempt was made on penetration but there was an interruption. Second report categorically stated there was penetration by a blunt object. Hyperaemia and tenderness are the same. The question remains how could a medical practitioner opine that attempted penetration of the vagina would still show evidence of tenderness and bruises that are undergoing healing after 35 days of such attempt? Such opinion is ridiculous.

activity requires a careful, methodical approach to ensure a robust evidentiary value and an understanding of genitonal anatomy and sexual physiology to interpret its significance for the courts.<sup>7</sup>

Taking the reports further, the reports as made by two different medical examiners 35 days apart were radically different. The evidence of total penetration in the later report, which penetration caused some injuries that were undergoing healing after 35 days is such a mark that cannot be overlooked. Could it be that the first medical examiner did not examine the victim but merely made up the report? The evidence of penetration in the later report also needs further clarification. Could it be that the alleged penetration as found by the medical examiner arose out of a fresh sexual intercourse by another person with Miss Portal Beer? How could bruises and tenderness still be visible after 35 days in the vulva of a 9-year-old Miss Portal Beer that was allegedly defiled? What other things could have caused some tenderness around the vulva of a child other than sexual assault possibly after 35 days of the alleged act? These simple questions have cast aspersion on the credibility of the medical reports.

### **3. Forensic Science and Forensic Evidence**

Forensic science is essentially the search for information concerning past events specific to criminal investigations. A forensic scientist may be a specialist in one particular area or he/she may be trained in a number of areas of expertise.<sup>8</sup> The application of scientific principles and methods to crime investigation to support legal decision making is somewhat forensic science. Forensic science cannot stand alone to produce forensic evidence. 'The term forum is Latin for public and forensic is derived from that term. 'Forensic science' implies, then, something about science and public. In the broadest sense then, forensic science can be defined as the methods of science applied to public matters. By this definition, forensic science does not necessarily have to do with crime; however, the term has evolved in modern times to mean the application of science to court or criminal matters. Most forensic scientists work in the criminal area of the justice system, although civil cases are an important component of forensic science.'<sup>9</sup> After the collection of material evidence like vaginal swab, blood samples, body fluid, from the crime scene as well as the victim and alleged criminal defendant where they are available, forensic science principles are then applied in analyzing the material evidence together with close medical examination of the victim to produce forensic evidence. In the course of assault of the victim semen may be deposited in the victim, body hairs may be attached on the body of either party, body particles may be left in the body of the victim, even the cloths of the victim and the assailant may have blood stains, semen stains and other body fluids may be traced.

The process of collection and preservation of these pieces of material evidence and analyzing them will determine if the forensic evidence obtained thereby may be admitted in evidence in court and relied on in giving verdict. Forensic evidence is most useful in confirming suspect's involvement in the crime.<sup>10</sup> 'FE is evidence obtained by scientific methods such as ballistics, blood test, and DNA test and used in court. Forensic evidence often helps to establish the guilt or innocence of possible suspects. Analysis of forensic evidence is used in the investigation and prosecution of civil as well as criminal proceedings. FE can be used to link crimes that are thought to be related to one another. For example, DNA evidence can link one offender to several different crimes or crime scenes. This linking of crimes helps the police authorities to narrow the range of possible suspects and to establish patterns of crimes to identify and prosecute suspects.'<sup>11</sup>

FE helps in resolving crimes by identifying whether the defendant is the perpetrator of the crime. This can be ascertained through DNA profiling from the material evidence collected and analyzed. The use of sexual assault kits is of the essence if material evidence gathered and results of the analysis will be anything to rely on. Most of the materials to be found and used in sexual assault cases are mostly biological. The presence of biological evidence can confirm sexual contact and or aid in suspect identification.<sup>12</sup> Where the material biological evidence was not well handled and preserved by the forensic expert, the FE thereby will be rejected by the court. This may be said to have failed the authenticity test or procedure in the process leading to analysis and forensic evidence production or generation. The reason for this is not far-fetched. Most biological material evidence disintegrates with time. Hence where not promptly collected and preserved in that condition within the shortest time possible may lead to its value being lost totally.

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<sup>7</sup> C A Lincoln; *Sexual Assault: Forensic Examination in the Living and Deceased*. Academic Forensic Pathology [2018] 8(4), 912

<sup>8</sup> Kimberlee S. Moran, Introduction to Forensic Science' available online at [https://www.academia.edu/13761543/Introduction\\_to\\_Forensic\\_Science](https://www.academia.edu/13761543/Introduction_to_Forensic_Science)

<sup>9</sup> Forensic Sciences: The Basics, Third Edition, CRC Press Taylor and Francis obtained online at ATQ50\_K22324\_Sample.pdf (routledge.com)

<sup>10</sup> Tasha A Menaker *et al*. The Use of Forensic Evidence in Sexual Assault Investigation: Perceptions of Sex Crime Investigators. [www.researchgate.net/publication/12/12/23](http://www.researchgate.net/publication/12/12/23)

<sup>11</sup> Forensic Evidence Law and Legal Definition | USLegal, Inc.

<sup>12</sup> Tasha A Menaker *et al*. FN5 ante.

#### **4. Impact of Forensic Evidence in Sexual Offences in Nigeria**

The role of *FE* in sexual offenses is complex and multi-faceted. On the one hand, *FE* can play a vital role in identifying and helping in prosecution of perpetrators of sexual crimes. However, there are concerns that the use of *FE* in sexual-related offenses can lead to the wrongful conviction of innocent individuals. Notwithstanding this doubt, forensic evidence is simply the use of scientific analysis to ascertain the DNA of the suspect by matching it to that of the victim through a scientific means, by obtaining his fingerprints, collection of blood-stained material evidence, as well as possible hairs found on the victim's body so as to identify the offender.

*FE* is evidence which is scientifically collected, examined, and analyzed and made available for law enforcement purposes.<sup>13</sup> This definition emphasizes the importance of scientific rigor in the collection and analysis of forensic evidence. It also highlights the primary purpose of forensic evidence as to aid law enforcement agencies in solving crimes. For example, DNA evidence has become a powerful tool for linking suspects to crimes. Fingerprint analysis can also be used to identify suspects, and it can be especially useful in cases where there is no DNA evidence. These types of evidence can help to build a strong case against a perpetrator and can lead to a conviction. In addition to identifying and prosecuting perpetrators, forensic evidence can also be used to exonerate innocent individuals. This is especially important in sexual offenses, where false accusations can have a devastating impact on a person's life. Forensic evidence can provide vital information that helps to solve crimes, but rarely can it lead to false convictions.

DNA evidence is often considered to be the most reliable type of forensic evidence, and it is commonly used in sexual assaults, rapes and many more cases. Forensic science can be used to create a DNA profile through DNA evidence, which can be matched to a suspect or an existing database of DNA profiles. This can provide strong evidence that the suspect was present at the scene of the crime, where a match occurs. The evidence can also be used to exclude a suspect, meaning that it can show that a particular person could not have been the perpetrator of the crime. DNA evidence resulting from blood sample submitted to the police voluntarily by defendant was admitted in evidence by lower court and affirmed by the Court of Appeal.<sup>14</sup> The DNA was found to have matched the one collected in the course of investigation.

Beyond the DNA evidence, other types of forensic evidence can be used to identify the perpetrator of a sexual crime. The analysis of hair, fiber, and other trace evidence can also be used to link a suspect to a crime scene. In some cases, digital evidence, such as images or video recordings, are reliable in identifying perpetrators of sexual crimes. Fingerprint evidence, for example, can be used to link a suspect to a crime scene. Fingerprints evidence is so important and most often cannot be mistaken.<sup>15</sup>

The use of forensic evidence in sexual-related offenses is not without its critics. It has been argued that the allure of forensic evidence is undeniable. It is often touted as 'scientific' and therefore supposedly above the petty disputes of everyday life. Its reputation as an infallible, unbiased source of truth does not withstand scrutiny.<sup>16</sup> Some have argued that the use of forensic evidence can lead to the wrongful conviction of innocent individuals. Several arguments have been advanced. Forensic evidence it has been argued is often based on subjective interpretations and can be influenced by bias. Similarly, the accuracy of some types of forensic evidence, such as hair analysis and bite mark analysis, has been called into question. Finally there is always the possibility of contamination of forensic evidence, which can lead to false results. Despite these concerns, forensic evidence remains an important tool in the investigation and prosecution of sexual-related offenses. With proper safeguards in place, forensic evidence can help to ensure that justice is served.

#### **5. Admissibility of Forensic Evidence in Nigeria**

The admissibility of evidence in Nigeria is governed by Evidence Act 2011. The general rule for admission of all types of evidence in Nigerian is governed by the Act, including forensic evidence. *FE* comes within the ambit of expert evidence and therefore opinion of an expert with regard to any matter is subjected to provisions of Evidence Act. There is no straight mention of *FE* in the Act. However, *FE* being expert evidence comes within the ambit of opinion evidence and therefore subject to Evidence Act.

The major challenge with forensic evidence admissibility in Nigeria is the lack of standardized procedures for its collection and analysis. Without standardized procedures, it can be difficult for courts to assess the reliability and accuracy of forensic evidence. This is especially true for DNA evidence, which is often considered to be the gold standard of forensic evidence. Most of the guidelines are set by the superior courts in case laws. Outside our

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<sup>13</sup>David Anthony Okonkwo, 'Forensic Science and the Administration of Criminal Justice in Nigeria', Spectrum Books Limited Nigeria, p 13

<sup>14</sup>*Osemeka v The State* (2002) 5 NWLR (pt. 764) 483

<sup>15</sup>*Oyewole & Anor v The State*, (2012) 17 NWLR (Pt. 1325) 533. The defendant was convicted based on finger print evidence collected at the scene.

<sup>16</sup>Erin Murphy, 'Inside the Cell; The Dark Side of Forensic DNA', Harvard University Press 2015, p. 2

jurisdiction Sexual Tests Kits (*STK*) are deployed for collection and transportation of pieces of material evidence collected from the scene of crime as well as from victims and suspected offenders. Materials like vaginal swabs, hairs, blood-stained materials, semen samples or semen-stained materials, body particles and other body fluids are collected and transported to the laboratory with *STK*. These kits are designed to preserve the pieces of evidence collected in the same temperatures as at the time of collection to preserve it and ensure its quality does not degenerate.

Without clear guidelines for the collection and analysis of DNA evidence, its admissibility in Nigerian courts is uncertain. In *Danladi v. The State*<sup>17</sup> the Supreme Court of Nigeria ruled that DNA evidence was inadmissible in the case because the chain of custody was not properly established. The Court found that there were gaps in the evidence as to how the DNA sample was collected, stored, and analyzed, and it concluded that the DNA evidence was not reliable. The aphorism that law is the prophecies of what the courts will do in fact and nothing more pretentious is law is somewhat sacrosanct. Lack of funding has led to a lack of equipment, facilities, and trained personnel, which has compromised the quality of evidence and the ability of the system to deliver justice.<sup>18</sup>

Lack of proper legal framework for the use of forensic evidence in Nigeria is another major challenge. Without a clear set of rules and regulations governing the use of forensic evidence, there is potential for abuse and misuse of this powerful tool. Without clear guidance on how to handle and analyze forensic evidence, it is easy for errors to be made and for innocent people to be convicted based on flawed evidence.<sup>19</sup> It is clear that the prophecies of what the courts will do in fact and nothing more pretentious is law. So, the precedents laid down by the superior courts ought to be followed in dealing with *FE*. Be that as it may, there is ample room for improvement starting with proper funding thereto training and re-training of the experts in forensic science. It will be better and proper to have a clear provision on *FE* admissibility than being subsumed under expert evidence.

## **6. Conclusion**

The application of forensic science leading to generation of *FE* is akin to mathematical science with precision and accuracy. It is such an important aspect of science and its application to criminal justice administration will in no great way lift our criminal justice administration to mathematical science jettisoning intuition and confusion of the judge in sifting through medical reports and oral evidence that raises more doubts than clarity in the course of trial and evaluation of evidence. *FE* use and application will lead to near perfect accuracy in dealing with sexual assault offences and related matters thereto. The need for establishment of proper framework and standard is of the essence if the judiciary can still be viewed as the last hope of the common man. *FE* exclusion of innocent person is apt as it is to ground conviction. Our judges should be weary in convicting alleged offenders based on medical report and oral evidence especially where there is doubt as to the perpetrator of the alleged offence. Proper and adequate funding and training of personnel in the field of forensic science is of the essence if Nigeria will not be left behind in forensic science and *FE* developments. The ethical, meticulous, and comprehensive application of *FE* not only underscores the resolution of sexual offense cases but also stands as a testament to the commitment to truth, fairness, and the protection of human rights and dignity. With constant advancements in forensic science and technology, the impact and significance of *FE* in sexual offenses will continue to evolve shaping the landscape of criminal justice and victim support.

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<sup>17</sup>(2007) 12 NWLR (pt. 1047) 613, *Adeola Sodipo v. The State*, (2012) All FWLR (pt. 594) 1620

<sup>18</sup>Bamidele Daramola, 'Crime and Criminal Justice in Nigeria', Cappelson Publishers, Nigeria 2017, p. 184, Also Uwaifo Augustus Osazuwa, 'Towards a National Institute in Nigeria', Obarisi Publications 2019, pg24, N.U Iko, 'Science, Justice and the Law: The Nigerian Experience', National Centre for Law Enforcement and Administration of justice 2003, p. 109-111, M.E Ojo, 'Crime and Criminal Justice: A Nigerian Perspective', Bookcraft Limited 2017, p. 121

<sup>19</sup>Oluwatoyin Odeku, 'Forensic Science and Administration of Criminal Justice in Nigeria', Adonis & Abbey 2014, p. 92