

Keith Borer Consultants

Forensic expertise — *when you need it*

September 2016



‘There has never been a better time to make a forensic challenge’

In 2016 KBC is seeing a record number of cases dropped, discontinued or acquitted following our input.

This is part of a country-wide trend since the introduction of short form (SFR1) forensic reports by the prosecution.

Short form reports were never intended to, and often do not, stand up to the level of scientific scrutiny required for evidence. As we have previously reported, they are primarily a tool designed to elicit a guilty plea.

Too often the gap from SFR1 to forensic evidence is not bridged: requests to the commercial providers to undertake further work and prepare evidential statements are not made, or the SFR1 leaves critical questions untested and is frequently based on unscientific assumptions.

Case 1

A DNA ‘hit’ is often put forward in an SFR1 without any evaluation of what action may have led to the ‘evidence’ being deposited. In a case of dangerous driving, KBC’s client was charged with dangerous driving as a DNA profile matching him was generated from blood on the driver’s airbag. As both driver and front seat passenger were injured, it was impossible to distinguish whether the blood was deposited during the collision, or afterwards as the occupants got out of the car. Mechanical and injury investigations may have helped, but after our report the CPS discontinued the case.

In this case the client could explain how his blood was on the driver’s airbag even though he was the passenger. **In more complex cases, however, it may be unrealistic to expect a defendant to have the necessary expert knowledge of transfer and persistence issues to be in a position to explain a database hit.**

Case 2

In a case of arson, a fire investigation dog had given an indicative response for ignitable liquids at a fire scene. **The prosecution denied any samples were recovered for laboratory testing and hence the dog’s response ultimately became the prosecution ‘evidence’.** How the CPS were intending the dog to testify we do not know but with KBC’s help the defence were successful in getting this aspect excluded.

Case 3

In offences involving indecent images of children, it has become common for the prosecution expert to place the images in a folder for the OIC but in the process ‘lose’ the file path for those images. This means that the prosecution are then unable to identify where on the computer or mobile phone the images were found, which is critical.

In one case, images were reported on both a mobile phone and a computer. **Our work demonstrated that on neither the computer nor the phone was there evidence of the user accessing the images.** Indeed those found on the computer were present as a result of a backup of data from the phone. Joint reports accepting our findings were prepared with the Crown experts. Subsequently the Crown offered no evidence.

Police now charging for defence access

Over the last 2 years it has become common practice for commercial prosecution forensic providers to charge the defence for access to casefiles and for hosting examinations of evidence. We forewarned the Legal Aid Agency that it would only be a matter of time before police forces introduced similar charges. Regrettably, in July, the Metropolitan Police issued their first schedule of charges for defence access, with other police forces likely to follow suit soon.

Our view is that this is a misuse of LAA funds; however the LAA have informed us that they will consider such requests.

More significantly, for those defendants who do not qualify for legal aid, such charges are a further cost impediment to securing sight of the evidence on which their prosecution is being based.

Keith Borer CONSULTANTS

DNA evidence: new statistical evaluation

The move to more sensitive DNA profiling systems has resulted in many more mixed profiles being generated. Commercial statistical packages have been developed which utilise the power of computers to process large numbers of profile possibilities in an attempt to assess the strength of DNA evidence.

In some cases, the legal focus is now on the statistical evaluation of these possibilities. Experts at KBC have undertaken training on how these packages can be used safely. They can advise on the merits and limitations of different statistical approaches as well as the significance of the results in the context of your case.

To help with your questions in this area, please contact Lee Fagan (Durham office) or Dr Helen Davey (Huntingdon office) in the first instance.



Cases funded by individuals on a private basis

As a result of legal aid restrictions to funding, we increasingly provide services to clients on a private basis. We have built a high quality reputation for providing reports in privately funded drink and drug driving cases, other motoring offences, cases involving handwriting or disputed signatures and more complex matters involving sexual assault or indecent imagery.

We recognise the importance to you and your client of ensuring your client has control over the costs and we can provide guidance on whole case costs if required. A staged approach to the work is often more appropriate if timescales allow.



@KBCalison

You can follow Keith Borer Consultants on Twitter for up to date details of CPD training seminars for solicitors and barristers, links to news articles and case excerpts that may be useful to your case.

DURHAM OFFICE

Locard House
Belmont Business Park
Durham
DH1 1TW

DX 715310 Durham 14
Tel: 0191 332 4999
Fax: 0191 332 4990

HUNTINGDON OFFICE

Tel: 01480 432 794
Email:
huntingdon@keithborer.co.uk

And in Scotland

Tel: 01835 822 511

Services

- Alcohol
- Arson
- Ballistics
- Blood patterns
- Body fluids
- CCTV
- Cell site analysis
- Chemicals
- Computer examination
- Crime scene assessment
- DNA profiling
- Damaged clothing
- Drugs
- Explosions
- Fibres
- Fingerprints
- Firearms
- Firearms residues
- Fires
- Footwear marks
- Glass fragments
- Hairs
- Handwriting
- Health & safety
- Identification of stolen cars/parts
- Industrial accidents
- Mobile phones and tablets
- Paint
- Personal injury
- Road traffic accidents
- Speeding
- Tachographs
- Toxicology
- Vehicle insurance fraud
- Video imaging
- Wounding