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NEED FOR FORENSIC SCIENCE IN THE CRIMINAL INVESTIGATION PROCESS IN NIGERIA

Mohammed Amali*

and

Ngozi Onyinye Nwafor-Orizu**

Abstract

Proof beyond reasonable doubt is the requirement of our criminal law. The policy derives from the fact that human justice has its limitations, especially given the grave injustice that can be wrought by a wrongful conviction. Nonetheless, the criminal justice process depends on evidence and inference.¹ And although it is said in criminal jurisprudence, that it is "better than a hundred guilty persons escape than one innocent person suffers,"² the possibility of error is inherent in any system of justice. However, the difficulties experienced by judges, lawyers, and prosecutors alike in arriving at the justice of a matter, where conflicting versions of the events are presented, are huge. Against this background, and using the context of doctrinal/analytical methodology, this paper evaluates the extant law on criminal investigation process in Nigeria. The paper identifies the limitations of the current legal framework and recommends the deployment of forensic and other scientific instruments, devices or platforms, in the criminal investigation process. This is to guarantee the reliability of evidence to be relied upon by the courts in the just determination of criminal matters.

Keywords: *Forensic Science; Criminal Investigation; Proof; Human Right to life.*

INTRODUCTION

Criminal investigation is an important part of the entire criminal justice system, such that its absence may lead to delay in the administration of justice, stalled trials, victimization of innocent citizens and encouraging the escape of

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1. See *Ukwunnenyi v State* [1989] 5 NWLR (Pt113) 137 at 156.

2. Benjamin Franklin, 'Letter from Benjamin Franklin to Benjamin Vaughn (Mar. 14, 1785), in *The Works of Benjamin Franklin 11*, ed. John Bigelow (1904), quoted in Alexander Volokh, 'In Guilty Men,' [1997] (146) *University of Pennsylvania Law Review*, 173-216.

offenders from paying for their misdeeds.³In addition, Courts being Courts of Law and Facts, it is trite that courts do not decide cases on mere conjecture or speculation.⁴ It is therefore imperative that the process that brings about a guilty verdict especially for the most heinous of crimes must be seen as the product of logical thinking based upon admissible evidence, which facts lead to a conviction as clearly found, and the legal deduction thereupon carefully made. It must not be allowed to stand if it is founded upon scraggy reasoning.⁵ Such convictions and sentences must therefore not be handed out carelessly, thoughtlessly, lackadaisically and without clear evidence of the guilt of the accused person.⁶

Consequently, this paper seeks to bring to bear the need for absolute scientific certainty in criminal investigations within the context of the distinct peculiarities of the Nigerian criminal justice system.

Existing Order

The bulk of Nigeria's substantive law of crime is contained in the Criminal Code applicable in the Southern States and the Penal/Sharia Penal Codes that are applicable in the Northern states.⁷ Specifically, these crimes include murder,⁸ treason,⁹ conspiracy to commit treason,¹⁰ armed robbery,¹¹ treachery,¹² directing and controlling or presiding at an unlawful trial by ordeal that results in death.¹³ These offences impose death upon conviction since Nigerian law applies the death penalty to date.

³. See Imosemi & Kupoluyi, 'Ensuring an Effective Criminal Trial and Investigation by the Nigeria Police Force: Challenges and Prospects,' [2017] (5)(4) *International Journal of Innovative Legal & Political Studies*, 21-28.

⁴. See *Agip (Nig) Ltd v Agip Petrol International* [2010] 5 NWLR (Pt.1187) 348 at 413

⁵. See *Felix Nwosu v The State* [1986] 5 NWLR (Pt 348) 359

⁶. *Ibid.*

⁷. See M T Ladan, *Introduction to Jurisprudence- Classical and Islamic*, (Malthouse Press Limited, 2010).

⁸. Section 319 of the Criminal Code Act Cap C 38 LFN 2004; Section 220 of the Penal Code Law Cap 89 Laws of Northern Nigeria 1963.

⁹. Section 37(1) of the Criminal Code; Section 410 of the Penal Code.

¹⁰. Section 37(2) of the Criminal Code; Section 411 of the Penal Code.

¹¹. Section 1 of the Robbery and Firearms (Special Provisions) Act Cap R 11 LFN 2004.

¹². Section 49A of the Criminal Code.

¹³. Section 208 Criminal Code.

The legality of the death penalty in Nigeria is founded on the wordings of *Section 33 (1) of the 1999 Constitution* (as amended) that holds that “every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”¹⁴ By this provision, lawful killing is legally permissible in Nigeria, and any infraction of the aforementioned laws attracts the death penalty irrespective of the constitutional right to life for every Nigerian citizen. Suffice it is to state too that this sentence is absolute, and if for instance an accused person is found guilty of culpable homicide, the only sentence a Judge can pronounce is death, and a Judge has no discretion to reduce death sentence to a term of years once the accused has been found guilty under that section of the Penal Code.¹⁵ There is, therefore, no margin for error in a judgment that sends a man to the gallows.¹⁶

It is pertinent at this juncture, to identify the circumstances that prove the guilt of an accused person in criminal proceedings generally, and on this point, the law is that the prosecution can prove the guilt of an accused person beyond a reasonable doubt in three different ways. There can be proof by the evidence of an eyewitness, proof by conclusive circumstantial evidence that pins the accused to the crime, and proof by the confessional statement of the accused.¹⁷ Of the three, it generally is settled law that there is no evidence stronger than a person's own admission or confession of his complicity in the offence for which he is arraigned in Court for trial. This makes a confession the strongest evidence of guilt on the part of the accused, stronger than the evidence of an eye witness, because the evidence, borrowing the daily axiom, comes out from the mouth of the horse, that is the accused.”¹⁸ Thus, the accused person gives

¹⁴. *Okoro v State* (2007) 2 NWLR (Pt 1019) p 530

¹⁵. See *The State v Babangida John*(2013) 12 NWLR (Pt.1368) 337

¹⁶. See *Felix v Nwosu* (note 5.)

¹⁷. See *Blessing v FRN* [2013] 12 WRN 36; See also *Emeka v The State* [2005] 4 LRCN 259.

¹⁸. *Omojuh v FRN* [2008] ALL FWLR (Pt 415) 1656.

himself up to the law and he becomes his own accuser and witness, hence the Court can, therefore, convict on such a confession.¹⁹

However, before a confessional statement may result in a conviction, it must be unequivocal in the sense that it leads to the guilt of the maker.²⁰ Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non-guilt, or wayward, a trial court Judge will not convict the accused but give him the benefit of doubt.²¹ But where a confessional statement is unequivocal, a trial Judge can convict on it. After all, there cannot be a more appropriate human being to give evidence of the guilt of the accused more than the accused himself. Therefore, if an accused says he committed the offence and the court comes to the conclusion that he made the statement in a stable mind and not under duress, the accused must be convicted.²²

The guilt of an accused person can also be established and proved through circumstantial evidence. It has been stated that circumstantial evidence is as good as, sometimes better than, any other sort of evidence, and what is meant is that there is a number of circumstances that are accepted so as to make a complete and unbroken chain of evidence.²³ And as was stated in a passage in *Emperor v Browning* cited in *Wills on Circumstantial Evidence*,²⁴ “in a case in which there is no direct evidence against the prisoner but only that kind of evidence that is called circumstantial, you have a two-fold task; you must first make up your minds as to what portions of the circumstantial evidence have been established, and then when you have got that quite clear, you must ask yourselves, is this sufficient proof? It is not sufficient to say 'if 'the accused is not the murderer. I know of no one who is. There is some evidence against him, and none against anyone else.’”²⁵

It is imperative to state that in criminal trials, the burden of proof lies throughout upon the prosecution to establish the guilt of the accused person

¹⁹ See Section 28 of the Evidence Act.

²⁰ See *Monuru Solola and anor v The State* [2005] All FWLR PT 269 @ 1751.

²¹ *Ibid.*

²² *Ibid.*

²³ *Samaila Musa v The State* [2018] LPELR- 44708 (CA).

²⁴ Seventh Edition (1936) at 324.

²⁵ See *Adie v State* [1980] LPELR-176 (SC).

beyond reasonable doubt.²⁶ This burden never shifts, and it behoves the prosecution to adduce credible, cogent and substantial evidence linking the accused person to the commission of the offence charged.²⁷ This legal requirement imposed on the prosecution is made more imperative by the provisions of *Section 36 (5) of the 1999 Constitution* that guarantees any person charged with a criminal offence the right to be presumed innocent until proved guilty.²⁸ Proof beyond reasonable doubt, however, does not necessarily mean proof beyond any shadow of a doubt. Once the proof of a case as offered by the prosecution drowns the presumption of innocence of the accused, the court is entitled to convict him although there could exist shadows of doubt.²⁹

A Case for Science in Criminal Investigation

Although an accused person can be convicted on the basis of one or a combination of the three methods discussed, it is desirable from a Nigerian standpoint, that a more exhaustive process leading to convictions is maintained. This is because although an accused person may be convicted solely on his own confessional statement, for instance, it is desirable to have some evidence outside the confession that would make it probable that the confession was true.³⁰ This is where the issue of forensic science comes into play.

By the provisions of the Evidence Act,³¹ *when the Court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or*

²⁶ See *Bello v The State* [2007] 10 NWLR PT 1043 @ 564.

²⁷ *Ibid.*

²⁸ See *Chinelo Nduka v The State* [2013] LPELR- 21199 (CA); See also Section 135 and 138 of the Evidence Act, 2011.

²⁹ The moment the proof by the prosecution renders the presumption of innocence on part of the accused useless and pins him down as the owner of the mens rea or actus reus or both, the prosecution has discharged the burden placed on it by section 138(3) of the Evidence Act.

³⁰ See *Dinie v The State* [2007] 9 NWLR PT 1038; See also *Nwaebonyi v The State* [1994] 5 NWLR PT 343 @ 130.

³¹ Section 68(1).

custom, or science or art, or in questions as to identity of handwriting or finger impressions are admissible.³² And the persons so skilled as mentioned are called experts.³³ Forensic analysis is vital to criminal investigation because a person cannot be at the scene of a crime without leaving something behind, and cannot leave the scene of a crime without taking something with them.³⁴ Knowledge of forensic tools and services provides the investigator with the ability to recognize and seize evidence opportunities that would not otherwise be possible.³⁵ Forensic analysis takes many forms namely physical matching, fingerprint matching, hair and fibre analysis, ballistic analysis, blood splatter analysis, DNA analysis, forensic pathology, chemical analysis, and forensic anthropology. Other forms are forensic entomology, forensic odontology, forensic engineering, criminal profiling, geographic profiling, forensic data analysis, and forensic document analysis.

Various types of physical evidence are found at almost every crime scene, and they are the sorts of evidence that can assist an investigator by directing them to develop a sense of how the crime was committed. Tool marks where a door was forced open can indicate a point of entry, shoe prints can show a path of travel, and bloodstains can indicate an area where conflict occurred.³⁶ Each of these pieces of physical evidence is a valuable exhibit capable of providing general information about spatial relationships between objects, people, and events. In addition, the application of forensic examination and analysis could turn any of these exhibits into a potential means of solving the crime.³⁷ DNA analysis is another form of science that is very vital to criminal investigators. It plays a large role in advanced societies in convicting the guilty and exonerating those wrongly accused or convicted.³⁸ DNA evidence is a powerful tool because, with the exception of identical twins, no two people have the same DNA.³⁹ Bodily substances containing cellular material,

³² See *Okafor v Effiong* [2017] LPELR-42699 (CA).

³³ See Section 68(2) of the Evidence Act, 2011.

³⁴ See Petherick, W A *Forensic Criminology* (Elsevier Academic Press, 2010).

³⁵ Gehl, Rod & Plecas, Darryl, *Introduction to Criminal Investigation: Processes, Practices and Thinking*. (Justice Institute of British Columbia, 2010).

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ 'Understanding DNA Evidence: A Guide for victim service providers'
<<https://www.ncjrs.gov/pdffiles1/nij/bc000657.pdf>> accessed 25 March 2019.

³⁹ *Ibid.*

such as blood, semen, seminal fluid, saliva, skin, and even hair root tissue can often be compared and matched back to its original owner with high statistical probabilities of comparison.⁴⁰ Therefore, DNA evidence collected from a crime scene can be linked to a suspect or can eliminate a suspect from suspicion.

Similarly important in the course of investigations is ballistic analysis because it determines if a particular gun was the originating source of an unknown bullet or cartridge casing.⁴¹ When a firearm is discharged, it leaves unique microscopic markings on the surface of fired projectiles (commonly referred to as bullets) and cartridge cases. These markings could then be compared to link cartridge cases and projectiles to crime scenes and recovered firearms.⁴² Also, tracing the flight path of a bullet significantly helps investigators recreate the events of a crime because the trajectory of a bullet helps forensic ballistic experts deduce the direction from which a projectile is fired.⁴³

From the foregoing, it is imperative that modern police agencies embrace new technologies, as a way of overcoming the limitations of traditional methods or old-fashioned policing and crime control.

Cross-Country Review

United States of America (USA)

As has been stated in earlier parts of this work, it is imperative that crimes generally are put through an exhaustive scrutiny before sentences are handed down. To this end, science has been key to eliminating a large percentage of errors that may be occasioned by trials devoid of scientific input, and the

⁴⁰. Lindsey, S, Hertwig, R, & Gigerenzer, G 'Communicating Statistical DNA Evidence' [2003] (43) *Jurimetrics J*, 147-163.

⁴¹. See Gehl, Rod & Plecas, Darryl, note 35.

⁴². See Morgan A & Jorna P 'Impact of ballistic evidence on criminal investigations', *Trends & issues in Crime and Criminal Justice* (No 548. Canberra: Australian Institute of Criminology, 2018).

⁴³. See 'Forensic Ballistics – Reconstructing a Crime using Bullets', <<https://ifflab.org/the-application-of-forensic-ballistics-in-criminal-investigations/>> accessed 23 March 2019.

United States of America has made very good use of science in criminal investigation over the years.⁴⁴

The first DNA-based conviction in the United States occurred in 1987 when the Circuit Court in Orange County, Florida, convicted *Tommy Lee Andrews* of rape after DNA tests matched his DNA from a blood sample with that of semen traces found in a rape victim.⁴⁵ The first State High Court to rule in favour of admitting DNA evidence came two years later (1989) in West Virginia.⁴⁶

In addition to important court cases scrutinizing the reliability of DNA evidence upon review of laboratory methodology and validation processes, the introduction of the Federal Bureau of Investigation's (FBI) Combined DNA Index System (CODIS) forensic DNA database – mandated by the *Federal DNA Identification Act of 1994*, provided another set of pressures on forensic laboratories to ensure their methodologies were sound and validated.⁴⁷ Through CODIS, Federal, State and local forensic laboratories exchange and compare DNA profiles electronically, thereby linking serial violent crimes to each other and to known offenders.⁴⁸ In other words, CODIS blends forensic science and computer technology into a tool kit for linking violent crimes.⁴⁹

This relevance of science in criminal investigation was apparent in the murder case of Genai Coleman- a forty-year-old teacher who was killed in a suburb of Atlanta (USA) in the summer of 2008.⁵⁰ *Genai Coleman had been waiting to pick up her teenage daughter at a transit station, when a man approached her, shot her in the chest, and stole her car, leaving her body behind in the station. Witnesses provided a description of the man. A surveillance camera from a nearby gas station also captured a video of a man matching the reports. When*

⁴⁴ See *Andrews v State*, 533 So 2d 841 (Fla Dist Ct App 1988).

⁴⁵ *Andrews v State*, 533 So 2d 841 (Fla Dist Ct App 1988).

⁴⁶ *Ibid.*

⁴⁷ See <<https://www.forensicmag.com/article/2005/01/evolution-dna-evidence-crime-solving-judicial-and-legislative-history>> accessed 23 March 2019.

⁴⁸ See <<https://www.fbi.gov/services/laboratory/biometric-analysis/codis>> accessed 28 March 2019.

⁴⁹ *Ibid.*

⁵⁰ <https://www.gwinnettdaily.com/archive/murder-suspect-i-know-a-little-something-about-it/article_aa48f01e-dc40-5321-aeb1-e4ed8784e5e4> accessed 23 March 2019.

authorities later located the stolen car, they found a cigarette butt under the driver's seat. Authorities tested saliva on the cigarette stub for DNA. They compared the results to profiles in a DNA database of persons convicted of felonies. The sample matched a man with a prior drug conviction. His name was Donald Smith.

The odds that the DNA test results were incorrect were ten billion to one. So when police apprehended Donald Smith in early 2010, they did not believe him when he said he had not committed the crime. Officers showed him the surveillance footage. To their surprise, Donald told them that the man in the video was his identical twin brother, Ronald. He also stated that if the images were shown to the rest of the Smith family, they would confirm his claim, and they did. Additional support for Ronald's guilt came from fingerprints found in the stolen car. Identical twins share the same DNA profile, but they do not share the same fingerprint ridge patterns. Records from Ronald Smith's cell phone usage also placed him in the vicinity where Coleman's vehicle had been abandoned. On the basis of this evidence, Ronald was arrested, charged, and brought to trial.⁵¹

Another case that highlighted the potency and conclusive nature of science was in the 1980 murder of Katharina Reitz Brow in her Massachusetts home.⁵² Brow's body had more than thirty stab wounds, and scientific testing of the blood at the crime scene showed most of it was type B, Browns blood type. Police also found some type O blood that they assumed belonged to the killer. Authorities eventually settled on 26-year-old Kenny Waters as the prime suspect. He lived next door to Brow and worked at a restaurant she often visited. He also had type O blood. Police arrested Waters for the killing, and based entirely on circumstantial evidence, he was convicted in 1983 and sentenced to life in prison. DNA testing years later on a knife and blood-

⁵¹ Elizabeth Murray, *Overturing wrongful convictions: Science Serving Justice*, (Lerner Publishing Group, 2015).

⁵² See "The Price of Freedom: What Happens to the Wrongfully Convicted?" <<https://www.forbes.com/sites/kellyphillipsrb/2012/05/01/the-price-of-freedom-what-happens-to-the-wrongfully-convicted/#21c8d7df12d0>> accessed 26 September 2019. See also- <<https://www.forbes.com/sites/kellyphillipsrb/>>accessed 26 September 2019.

*stained curtain preserved from the murder scene proved Mr. Waters' innocence. He was released from prison in 2001 having served eighteen years behind bars for a crime he did not commit.*⁵³

These two cases are not in any way an exhaustive analysis of the importance of science to criminal investigation, but they do depict exactly how vital scientific tools are to criminal investigation both from a prosecutorial standpoint and from the perspective of the defence. In the *Katharina Brow* case, although it remains unsolved to this day because the perpetrators of the crime have never been found, science exonerated an innocent man from the jaws of injustice. In addition, in the Genai Coleman case, thorough scientific came to bear because DNA evidence alone could have led to the wrongful conviction of a twin instead of another. Here, fingerprint analysis ensured that the right man was put behind bars.

The United Kingdom (UK):

The United Kingdom maintains a very robust criminal investigation system with science fully incorporated in it. The National DNA Database was launched in 1995 with Second Generation Multiplex (SGM) DNA profiling. This test produced a DNA profile at six target areas of DNA and a gender marker.⁵⁴ It holds the DNA profiles and relevant DNA samples from a select number of UK individuals, and every profile in the UK National DNA Database is derived from a sample of human material, such as saliva or hair, collected from a crime scene.⁵⁵ The database provides the police with matches linking an individual to a crime scene, or a crime scene to another crime scene, and between April 2001 and March 2016, it produced 611,5571 matches to unsolved crimes.⁵⁶ In 2015/16, the police sent a crime scene investigator to look for forensic evidence in 416,715 (11.0%) of crimes, and within the same

⁵³. See Elizabeth Murray, note 51z.

⁵⁴. See <<https://data.gov.uk/dataset/c7d4178d-999b-41fd-9312-5399d2aff57d/dna-population-data-to-support-the-implementation-of-national-dna-database-dna-17-profiling>>.

⁵⁵. See <https://www.yourgenome.org/facts/what-is-the-uk-national-dna-database>>accessed 26 September 2019).

⁵⁶. National DNA Database Strategy Board Annual Report 2015/16- Presented to Parliament pursuant to Section 63AB(8) of the Police and Criminal Evidence Act 1984- February 2017.

period, data collected from police forces in England and Wales shows that out of 22,584 crime-scene profile records loaded to NDNAD, 11,378 (50.4%) resulted in an outcome counted by the police following a match on NDNAD.⁵⁷

For quality control, importantly, no police officer or police force has direct access to the data held on NDNAD but they are informed of any matches it produces. Similarly, forensic science providers who undertake DNA profiling under contract to the police service, and submit the resulting crime scene and subject profile records for loading, do not have direct access to NDNAD.⁵⁸

Agenda Setting for Nigeria

The importance of criminal investigation to the entire criminal justice system cannot be overstated, and members of the Nigeria Police Force by virtue of the provisions of Section 214 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), shall have such powers and duties as maybe conferred upon them by law.⁵⁹ Among such specific functions are the powers to conduct prosecutions before any Court of Law in Nigeria.⁶⁰

The Nigeria Police Force Criminal Investigation and Intelligence Department (FCIID) is the highest investigating arm of the Nigeria Police.⁶¹ Its functions include investigation and prosecution of serious and complex criminal cases within and outside the country. The department also coordinates crime investigations/prosecution throughout the force for offences including homicide and armed robbery.⁶² While conducting its investigation of suspects, the members of the Nigeria Police Force are to be mindful of the Constitutional provision that “*every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty.*”⁶³ Such a person when arrested or detained shall also have the right to remain silent or avoid

⁵⁷ . *Ibid.*

⁵⁸ . *Ibid.*

⁵⁹ . S 214 (2) (b).

⁶⁰ . S 23 Police Act.

⁶¹ . See <<http://www.npf.gov.ng/investigation.php>> accessed 01 April 2019.

⁶² . These two crimes carry the death penalty.

⁶³ . S 36 (5) CFRN 1999 (as amended).

answering any question until after consultation with a legal practitioner of his choice.⁶⁴ Also important to note in the course of arrests/investigation is the right to dignity of the human person, and in this sense, the Constitution provides that:

*every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subject to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude, and (c) no person shall be required to perform forced or compulsory labour.*⁶⁵

From the foregoing, and despite not being an exhaustive appraisal of the laws that govern criminal investigation in Nigeria, it is clear to see that there is no shortage of laws to guide criminal investigation in Nigeria. However, how much adherence is paid to these laws in practice, or how contextually relevant they are to the contemporary Nigerian society leaves a lot to be desired. Recently, the ex-chief of Defence Staff, Air Chief Marshall Alex Badeh fell to a hail of gunfire on his way back to Abuja on a trip to his farm. Mr Badeh died from gunshot wounds sustained when his vehicle was attacked while returning from his farm along Abuja-Keffi Road. The Intelligence Response Team and Special Tactical Squad of the Nigeria Police Force immediately visited the scene towards carrying out a discrete investigation of the case.⁶⁶ Approximately ten days after the crime, the Nigeria Police Force announced that two suspects had been arrested in connection with the murder, and these suspects were the man who reportedly hired the assailants and the one who is said to have pulled the trigger.⁶⁷

And while the speed and manner in which the suspects were rounded up could be attributed to old-fashioned policing work, it begs the question of how certain we are as to the culpability of the alleged suspects. There was no report of the recovery of a murder weapon, neither were there reports of ballistic experts visiting the scene of the crime for a comprehensive analysis of the body and the car. The suspects are alleged to have confessed to the crime and

⁶⁴ S 35 (2) CFRN 1999 (as amended).

⁶⁵ S 34 (1) CFRN 1999 (as amended).

⁶⁶ <<http://dailypost.ng/2018/12/20/alex-badeh-former-chief-defense-staff-killed-police/>

⁶⁷ <http://thenationonlineng.net/badeh-two-suspects-held/>>accessed March 29 2019

suggestion, the police directed the vigilante members in Ikeduru Local Government Area to look out for anybody with fresh wound and apprehend him. It was as a result of this directive that the members of the vigilante arrested the Appellant who was found to have a fresh wound on his leg.

Dismissing the appeal, and discharging and acquitting the appellant, the Supreme Court queried why no effort was made by the prosecution to relate the wound to the bloodstain on the wall of the house. It was the position of the Court that in this day and age of advanced technological know-how, a DNA analysis could have easily solved the question as to whether the bloodstain was from the appellant's body.⁷¹ Failure by the prosecution to lead evidence to ascertain whose bloodstain was on the wall according to the apex Court is fatal to their case because merely tracing the bloodstain to the appellant as was done in the case is mere speculation which no Court can act upon.⁷² A juxtapose of this case with the aforementioned Genai Coleman case from the Cross Country review of the USA shows a clear disparity between the efficient manner in which science was deployed to crack a case and Nigeria's neglect of science in determining criminal culpability. In the Genai case, despite finding a man with matching DNA and clear resemblance from surveillance footage, science was able to go further to distinguish between twins, who the real murderer was.

Another case that highlights the need for the presence of forensic analysis within Nigeria's investigative and prosecutorial bodies was the case of *Ikomi v State*.⁷³ In this case, the appellants were charged with the murder of one Mr. Uanlie Agbede, a Police Constable assigned to guard and protect the 1st appellant who was a Judge of the High Court of Bendel State and at the material time the Chairman of the Bendel State Armed Robbery and Firearms Tribunal Benin. The 2nd appellant lived in the 1st appellant's official quarters and ran errands for him while the 3rd appellant was the 1st appellant's cook/steward. Their indictment was consequent upon the consent given on the 16th December 1985 by the Chief Judge of Bendel State pursuant to an

⁷¹. *Ibid.*

⁷². See *Oguonzee v State* [1998] 5 NWLR.

⁷³. [1986] 3 NWLR (Pt 28) 340.

application by the Attorney-General of Bendel State under section 340(2)(b) of the Criminal Procedure Law of Bendel State 1976.

The depositions in support of the application revealed the following facts:

- (a) That the deceased Police Constable (Agbede) duly reported for duty on the fateful night on the 4th of July, 1983 at the official residence of the 1st appellant at No. 3 Obahon Street, GRA Benin
- (b) That the deceased was let into the premises by the 2nd appellant who opened the gate
- (c) That the gate of that premises was locked and the key was held by either the 2nd or 3rd appellant
- (d) That the premises was fenced round and had two exit gates permanently locked when not in use.
- (e) That there was nothing to indicate that those gates were opened on that fateful night
- (f) That when the gate was opened by the 2nd appellant the next morning, the deceased Police Constable was found in a pool of blood clearly murdered
- (g) That during that night only the deceased, the appellants and the two daughters of the 1st appellant were known to be in the 1st appellant's premises.
- (h) That the medical evidence showed that the deceased was found in a pool of blood; that there were signs of violence, loss of most of the deceased's penis and scrotum; that there were incised wounds on his neck and chin; that his death was consistent with manual strangulation and sharp cutting object in respect of peno-scrota injuries.

In a nutshell, Justice Ikomi was accused of murdering his police guard in the early hours of the 5th of July 1985. The prosecution team amongst other pieces of evidence insisted that the circumstances of the case as itemized above pointed to an inside job. The Prosecution relied strictly on circumstantial evidence to charge him to Court, and although the learned Judge would later be found not guilty, discharged and acquitted, he had already lost his place on the Bench and he died a few years afterwards, a broken man. Admittedly, this

case happened when forensic tools like DNA analysis were still in infancy. Nevertheless, it gives credence to the need for science in criminal investigations because scientific analysis in the instant case would have either strengthened the strong circumstantial case the prosecution had or completely eliminated the appellants from being physically capable of committing the murder.

CONCLUSION

In the light of the methods of investigation, Nigerian investigators are notorious for deploying (including torture), it is worrisome to think about how many innocent suspects may have been convicted on the basis of improper investigation that has not been aided by the conclusive nature of scientific analysis because the facilities are not present. Had the Supreme Court not set aside the concurrent findings of the two lower Courts in *Uchechi Orisa v The State (Supra)*, the appellant would have been sent to the gallows on evidence that does not pass the test of certainty.

The same is true for the case of *Ikomi v The State (Supra)*, and both cases highlight the importance of scientific proof in criminal investigations because if there is a scientific way of coming to conclusions about matters arising from criminal investigation, and the proof generated by that scientific method is conclusive of the fact that the suspect has committed an offence, the onus automatically stays on the suspect to explain to the contrary. This would be useful particularly wherein exercise of his right to be silent or not to implicate himself, a suspect chooses not to make a statement. Where he continues to insist on such rights, the scientific proof would become very useful for the purpose of establishing his guilt or culpability. Consequently, there would be no need for torture and all other forms of inhuman or degrading methods deployed by investigative authorities to extract confessional statements from suspects, which confessional statements often run into problems of involuntariness and admissibility when subjected to the test during criminal trials.

This paper, therefore, finds that it is paramount that science becomes an integral part of the Nigerian Criminal Justice System. To this end, this paper advocates for the establishment of a central criminal database reminiscent of those of the United Kingdom and the United States of America as highlighted

in the cross-country survey of this paper. This should involve keeping an up-to-date database of all offenders, while experienced scientists should be engaged to provide support during prosecution or defence in investigations. It is worthy of note that Lagos State only just opened Nigeria's first-ever DNA forensic laboratory in September 2017.⁷⁴ However, there should be a more aggressive approach to follow this lead on a more national level. There is also the lack of trained forensic scientists within the country, and a check at the National Universities Commission by this author revealed that at the present time, the only Institution of learning that offers courses in the field of forensic science in the country is the Police Academy in Wudil, Kano State.⁷⁵ As such, there should be a conscientious drive towards the training of forensic officers, and this can be achieved by the introduction of forensic science courses in the curricula of Nigerian Universities. Finally, as technology continues to advance, judicial and legislative reviews should continue to ensure that science serves justice and protects the public.

⁷⁴ . <<https://lagosstate.gov.ng/blog/2017/09/17/lagos-opens-nigerias-first-dna-forensic-lab/>>accessed March 29 2019.

⁷⁵ . The Police Academy is a University recognized by the National Universities Commission.