

Without suspect, authorities charge DNA before statute of limitations expires

February 23 2010, By Laura Bauer

Sitting frozen in the Kansas City, Mo., crime lab is a partially gnawed piece of candy. Police and prosecutors said someone spit it out years ago after he broke in and then damaged several classrooms in a local school. They've yet to lock up anyone for the crime, and the statute of limitations has long expired.

But here's the thing: The candy contained a man's DNA.

So prosecutors charged that DNA.

A critical crime solver, genetic science has clinched guilty verdicts in murder and rape cases for years. Now, as the technology advances, prosecutors in a few pockets of the country systematically use DNA evidence to file what are known as "John Doe" complaints, or no-name warrants, in less serious crimes such as burglary and [vandalism](#).

"If you don't stop the clock from ticking, there's nothing you can do," said Ted Hunt, an assistant Jackson County prosecutor who specializes in DNA evidence. "It's too late."

Since 2002, Jackson County, Mo., prosecutors have filed 28 John Doe complaints, and Hunt said that number would grow substantially. That's because police and prosecutors make sure they watch the clock.

Whenever a burglary, robbery or vandalism with DNA evidence is nearing its statute of limitation, police alert Hunt's office, and

prosecutors file a no-name charge.

By filing these complaints, and charging the DNA instead of a named suspect, prosecutors put cases on hold until they know whose genetic fingerprint they charged. These cases otherwise wouldn't be solved within the statute of limitations, and the suspects would be let off scot-free.

"Before, it was extremely frustrating," said Kansas City police spokesman Capt. Rich Lockhart. "You knew if he got away with it for three years, there was nothing we could do.

"Now, after all the hard work put into a case, someone will be held accountable for that," Lockhart said. "Whether it's now or 25 years from now."

Ten of the John Doe complaints filed in Jackson County have had matches in the database and suspects named. Of those cases, most have been through the court process.

In the candy case, prosecutors charged the DNA profile in 2006, about a week before the three-year statute of limitations would run out. Authorities haven't gotten a match on the DNA.

Criminal defense advocates said there was a downfall to charging someone's DNA. Statutes of limitations exist for a reason, they said.

People's memories fade. Witnesses move and can't be found.

"If a defendant in a property crime is arrested 20 years after the fact, based on his DNA, he's not able to defend himself effectively," said J.R. Hobbs, a Kansas City defense attorney.

But lawyers on the other side don't buy that criticism.

"They claim that DNA is the best evidence out there, yet when prosecutors and law enforcement use that evidence to convict their clients, they claim it's unfair," said Robert Giles, a senior attorney with the National District Attorneys Association. "This isn't a game where if the person can stay away from the police, they get away with it."

Courts across the country have upheld the use of John Doe complaints. Last month the Supreme Court of California ruled the no-name warrants were authorized under state law.

A systematic approach for lower-priority crimes may not be feasible for some counties. The resources just aren't there, said Wyandotte County District Attorney Jerome Gorman.

The Kansas Bureau of Investigation's crime lab completes testing for violent crimes in Wyandotte County, such as rapes, sodomies and murders. Asking the lab to do testing on burglary cases would be too much, Gorman said.

"There's no way they can do more without more funding," Gorman said.

In Johnson County, time and people can also be issues, said Steve Howe, the county's district attorney.

"One thing we need to be careful about is there are only so many chemists," Howe said. "We need to prioritize what we're working on."

In the mid-1990s, DNA evidence seemed most exclusive to crimes such as murder and rape. In those cases, criminals often leave behind a genetic fingerprint and a large enough sample to test.

But if investigators found DNA in burglaries, robberies or vandalism, it often wasn't enough to test. Or agencies couldn't send crime scene investigators out to every property crime scene.

Not anymore. In places like Kansas City, specially trained patrol officers collect [DNA evidence](#) at burglary crime scenes. Technological advances allow for minutely small samples to be tested.

When an intruder used a crowbar to pry open the door of a business more than three years ago and swipe \$6,000 in merchandise, crime lab technicians were able to extract DNA from that tool.

Technicians also tested a small blood smear found below shards of glass at a break-in at an area museum more than three years ago.

In those two catches, authorities have yet to get a DNA match.

Other prosecutors across the country also are looking for a way around time limits for property crimes. Some use John Doe complaints on a case-by-case basis. But others, such as Hunt, use the more organized and systematic approach to making sure crimes with DNA don't reach the time limit for filing a charge.

The district attorney's office in Denver takes it a step further.

Prosecutors there have filed about 100 John Doe complaints for property crimes in the past five years.

But Denver District Attorney Mitchell Morrissey said his office did not wait until the statute of limitations was almost up.

If the DNA is there, prosecutors typically quickly file a John Doe charge to help preserve the case.

"We may have 2 1/2 years left -- it doesn't matter, we file the case," Morrissey said. "We freeze everything in place. ... Otherwise, the bad guy gets away."

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