

Commentary on: Thompson WC, Taroni F, Aitken CGG. How the Probability of a False Positive Affects the Value of DNA Evidence. J Forensic Sci 2003;48(1):47–54.

Sir:

This letter is written to correct several errors in a paragraph within the section entitled “Errors Happen” on page 48 in the recently published paper “*How the Probability of a False Positive Affects the Value of DNA Evidence*” by William C. Thompson, Franco Taroni, Colin G.G. Aitken. J Forensic Sci 2003;48(1): 47–54.

Following a paragraph in which the authors describe an error in casework that resulted from an accidental switch of the reference samples for the defendant and the victim in a rape case, the authors claim that Cellmark Diagnostics admitted that a similar sample-switch error occurred. The authors reference a report from Cellmark Diagnostics Case No. F951078 from the case of *State of California v. John Ivan Kocak*. We have detailed here a factual accounting of the events and the error made in this case.

On February 22, 1995, two material cuttings containing a mixture of semen and blood were received at Cellmark Diagnostics from a crime laboratory, along with swabs from the victim and blood swatches from John I. Kocak. DNA testing at the CSF1PO, TPOX and TH01 short tandem repeat (STR) loci was performed using GenePrint™ STR Systems on the three samples. A report was issued on June 20, 1995. The report included a table of the STR results at each locus for the evidence, the victim, and for John Kocak. Based on this table of results, two scientists at Cellmark stated the conclusion: “John Kocak cannot be excluded as the source of the DNA obtained from the combined material cutting.” Prior to the commencement of the trial of John Kocak, a hearing on the admissibility of the PCR DNA evidence began in Superior Court in San Diego, CA on Thursday, November 16, 1995. A witness from Cellmark Diagnostics testified in the hearing on November 16 and 17. During testimony on November 17, it was realized that there was a transcriptional error in the report (see Reporter’s Transcript, November 16–17, 1995, case no. SCD 110465); the names of the

victim and John Kocak were reversed relative to the reported results, which resulted in an incorrect conclusion being stated. The transcriptional error that occurred during the creation of the report was immediately brought to the attention of the court by the Cellmark witness, and the corrected conclusions were presented in reported testimony at that time. An amended report with the corrected table and conclusions was issued on Monday, November 20. Because the amended conclusions, which included the victim but not John Kocak as a source of the DNA, were essentially inconclusive for the case, no Cellmark Diagnostics witness was needed to testify at John Kocak’s trial. Although there was no indication of any documentation errors in the case file or any technical laboratory errors at Cellmark Diagnostics, we requested the opportunity to retest one of the standards to verify the results. Identical results were obtained for the sample verifying that no sample switch or laboratory error had been made. A report stating that conclusion was issued.

Contrary to the statements by Thompson et al., there was no indication of any errors in the scientific procedures used or the data obtained in the case, and there was clearly no evidence handling error at the Cellmark Diagnostics Laboratory. Furthermore, no trial jury was present when the error was described since the case was not yet in trial and no jury had been seated. The only error made in this case at Cellmark Diagnostics was at the level of reporting the results where a transposition of the names occurred, and it was corrected immediately upon recognition of the error by a Cellmark employee.

Thank you for the opportunity to present the facts in this case.

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