

# **THE IMPORTANCE OF FORENSIC EVIDENCE IN JUDICIAL PROCEEDINGS IN NIGERIA**

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## WHAT IS FORENSIC EVIDENCE?

I will describe “forensic evidence” in simple terms as evidence of a particular kind that is distilled through the means of scientific analysis. As the word “forensic” is derived from the Latin term “*forensic*” and relates to the public arena (the “forum”) at which trials were conducted in ancient times (Ancient Rome), “forensic evidence” then refers to that evidence that is presented at trial for the sake of proving or disproving a matter in contention between the parties to the case – but then it has, in the meaning and understanding of the term, been particularly reserved for the type of evidence that requires knowledge and expertise in the field of science known as Forensic Science.

Forensic evidence is more commonly associated with criminal investigations concerning attacks and assaults on the person. Because of this, it is more usually associated with crimes and criminal trials pertaining to homicide, sexual assaults and armed attacks. But that will not give a complete picture of all that it involves. And so, apart from evidence concerning firearms and ammunition, apart from evidence obtained from a forensic pathologist or an anatomical pathologist to show a link between a dead person and a defendant in a criminal trial, apart from DNA evidence presented for the sake of identifying a defendant and matching him to a crime or to the scene of a crime, there is also evidence that was garnered for use in solving white-collar crimes; evidence obtained from forensic investigators and forensic accountants who analyse transactions and numerical data in cases of fraud (financial crimes), and electronic evidence presented in cases concerning cybercrimes.

And then, there is the civil litigation side of things – for, the field of forensic evidence will be as wide as the field of life! (Science continues to evolve and develop as we learn more about ourselves and about our world.) And so, you have DNA evidence coming in very useful in proving or disproving the paternity of a child (a matrimonial cause or an inheritance suit, for example), and you a forensic accountant or tax practitioner’s report for use in determining the matter of liability, or the quantum of liability, in a dispute over money between a bank and its customer. Of course, there is as well evidence (“trace evidence” of matching paint, for example) useful in determining fault or blame in a case pertaining to a road accident. As I said, the sky is the limit as to the types of evidence and the use to which such evidence can be put in aiding a court to do justice.

I should add that very importantly (but sadly overlooked in these parts), forensic evidence is key, very key, in answering an extremely important question that will agitate the mind in a coroner’s court – the question of how the death under inquiry occurred. The coroner is almost always dependent on the opinion of experts in that field of science – forensic science – as it is always relevant to the consideration of the manner of death.

Beyond the matter of civil or criminal law, there is an emerging field of forensic science that we cannot afford to overlook in court proceedings because it is so topical, so relevant, and so significant in today's world. (Remember that in order to achieve its role and mission, the court system must continually adapt to the needs of, and changes in, the society.) I speak here about mental health and more particularly about Forensic Psychology. The state of mind of an offender, or of a party to a suit, or of a person of interest, may be vital to resolving the issues in controversy. Indeed, in the Coroner's Court, it would be of immense value to a coroner in determining whether to make a verdict of suicide or of death by misadventure, for example. The forensic psychologist, as the name suggests, brings to bear his substantive training as a psychologist in the way he presents evidence to the court such that the evidence may be useful to the court in determining the vexed question of liability. To the court, therefore, he is more than just a psychologist just the same way as the forensic pathologist is more than just a pathologist.

## THE ADMISSION OF FORENSIC EVIDENCE BY THE COURT

Before I go into the substance of my presentation, I must point out one or two things. An understanding of them is necessary so that forensic evidence may not end up having been prepared for nothing; so that the evidence may indeed be made use of by the court. So this is preliminary and necessary.

Remember that it is not enough to have first class, high quality evidence produced after painstaking, arduous work. The law demands that the evidence must meet the criteria of acceptance set down by it in order for that evidence to be open to the consideration and use of the court. This we refer to loosely as the matter of the "admissibility of evidence". And so, the party presenting the evidence must be well guided by the provisions of the Evidence Act in order not to have that all-important piece of evidence rejected by the court.

Ideally, the evidence must be presented in a first-hand, direct fashion. This means that the person who made it, or prepared it, ought properly to attend trial and give evidence as a witness. He explains what he has done, and in the process, he presents his piece of work to the court in order for it to be admitted in evidence during the proceeding. There is, thus, a nexus between the matter of the admission of the evidence and the weight to be attached to it. By presenting his work by himself, the witness lends more authenticity to his work.

## THE WEIGHT TO BE ATTACHED TO FORENSIC EVIDENCE

Apart from the higher probative value of the evidence that I just mentioned (because it came from the person directly involved in making it), the fact of that person being made subject to cross-examination by the opposing party creates the potential of adding to the value and integrity of that piece of forensic evidence that was adduced through him – and therefore, its usefulness to the court. This is because the process of cross-examination is a test; a deliberate test created by the judicial process in order to ensure the cogency, veracity, and credibility of the evidence presented by a witness. And so, if the witness passes the test, the forensic evidence produced by him will then have additional probative value. But that added boost can only be because he, as the “maker” or author of the piece of forensic evidence, went through that test of cross-examination and passed it to the satisfaction of the court. But on the other hand, failing the test may turn out very damaging to the case of the party who called the expert!

Also necessary to bear in mind is the matter of preserving the integrity of that piece of evidence in another way. I speak here about the fact that the particular piece of evidence will no longer be of any value, or of any use, if the court finds that it has been compromised in one way or the other. The other side will usually make an attempt to prove this, not just by calling another expert witness to counter what his colleague has said, but also by seeking to prove that the evidence has been tampered with, or was doctored, or it was made by a person with limited skills or ability in that particular field (or no skills at all), or made by a biased mind, or produced with faulty equipment, or made via faulty reasoning or on the basis of a completely wrong/misguided premise, etc.

With particular regard to Police investigations, one then sees the importance of arriving immediately at the scene of the crime, cordoning off the area, and taking steps to avoid contaminating anything found at the scene in order to avoid damaging the integrity of the evidence that is thereafter extracted and analysed. A victim of assault must be made to undergo a medical examination in order to pick up vital evidence (bodily fluid of the offender) before it is washed off.

Finally on this matter of a background understanding of our laws on evidence, there should be an appreciation, a "working knowledge", of the differing standards of proof in criminal and civil cases.

All of these issues should be noted and well understood.

## THE VALUE OF THE EVIDENCE IN JUDICIAL PROCEEDINGS

Without evidence, there cannot be a judicial pronouncement (a decision of the court). Certainly, the judge does not have direct, firsthand experience of the matters before the court. The judge must depend on what was said, or shown, by someone else.

Forensic evidence, as we know, is scientific evidence. That is part of its definition. It is evidence that seeks to help the court of law “unravel the mystery”, as it were. It goes beyond the matter of the evidence of a witness recounting his or her own side of the story and seeking to persuade the judge to believe his/her own idea of the reality or truth of the matter in controversy. It is evidence of a higher dimension as it is geared towards helping the judge have a better understanding of the finer aspect of those matters in controversy. With the aid of science, which affords a deeper insight and understanding, the judge gains more clarity about matters ordinarily beyond the layman’s immediate comprehension. Indeed, because it is scientific, it tends to be impartial evidence, and tends to be given by a “professional” – someone, ordinarily, with a reputation to protect. Those two factors help in the art of persuading the judge. They give some sort of “quality assurance”, even though the evidence is open to being debunked by the other side.



The fact that the evidence is based on scientific analysis, which means that it should follow logic, or allow for a logical analysis, and which lends it to certainty, adds to its usefulness and value in my considered view. It is also the evidence of an expert in that particular field of study; someone with specialised knowledge and skills. Again, for this reason, it will be given greater weight by the courts.

To hone the point on the importance of forensic evidence to judicial proceedings and the determination of judicial proceedings, I thought it best to list out the types of forensic evidence there are and what their usefulness may be. I thought that a graphic style would help better in making the illustration.

EVIDENCE	USEFULNESS
Autopsy Report	Cause, Manner of Death. Liability/Non-liability for death based on manner of death. Murder or manslaughter?
Bodily Examination of Victim (Physical assault cases)	Cause of Injury. Liability/Non-liability based on type of injury or how it occurred. In a rape case, was there penetration? Or was it some other type of sexual assault?
Weapon (Guns, unfired bullets, spent cartridges, machetes, knives, residue from shots, etc.)	Prove/Disprove Identity of Offender. Matching fingerprint, matching ammunition, matching blood samples? Proves Prosecution's case of cause of death?
DNA Samples	Prove/Disprove Identity of Offender. Prove/Disprove Presence at Scene. Matching fingerprints, blood, seminal fluid, hair, nail, saliva, sweat? Prove/Disprove Paternity or Right of Inheritance
Trace (?) Evidence (Biological/chemical analyses of substances/material)	Prove/Disprove Liability or Presence at Scene. Prove/Disprove Identity of Offender. For example, matching paint on damaged car (at point of impact) and offender's car? Glass at the scene matches fragments picked up on offender's clothing/shoes? Toxicology report, substance examination in a drug trafficking or drug abuse case revealed use by offender? Tyre marks at scene match those of offender's car tyres? Mud scraped from offender's clothing exactly of the same composition as mud at the scene? Shoe print impression at scene matched shoe type and size of offender? Material picked up from factory ceiling found to be asbestos and found to have caused serious ailment or death of employee? Petrol sold at station was adulterated and was direct cause of "knocked" car engine?

EVIDENCE	USEFULNESS
Forensic Psychologist's Evaluation/Report (Can be by way of a court referral)	Prove/Disprove Liability, or the <i>Mens Rea</i> (guilty mind) for the Offence – Did the offender understand the gravity of his/her action? Was it a case of diminished responsibility? Was it a case of manslaughter and not murder? Would a defence of provocation succeed? Did the obligor have the capacity to understand what he signed? Who should have custody of a child, bearing in mind the nature/state of mind/disposition of that child?
Electronic Data Analysis	Prove/Disprove Liability. Prove/Disprove Identity of Offender. Reveal location of a victim of kidnapping. Expose identity of a kidnapper via banking transactions. Discover or recover files even when deleted or password-protected. Unravel encrypted files to reveal content and the maker. Analyse electronic data and/or trace electronically conducted transactions ("follow the money") to reveal illicit flow, method of illicit flow, and the identity of the actors. Provide evidence of corroborative value to back up testimony of the investigator or defendant.
Numerical Data Analysis	Prove/Disprove Liability (for an alleged debt, case of tax evasion). Prove/Disprove Identity of Offender/Obligor. Analyse financial documents and/or trace financial transactions ("follow the money") to uncover or reveal illicit flow, method of illicit flow, and the identity of the actors. Provide evidence of corroborative value to back up testimony of the investigator or defendant.
Expert Handwriting Analysis/Report	Prove/Disprove Identity of Offender. Prove/Disprove Liability. Useful in cases of forgery, whether in a criminal or civil proceeding.

As I said before, the kinds of forensic evidence that will be useful to the court will become more in number and more varied as we delve deeper into the exploration of this field of science.

And in explaining the corroborative value of this type of evidence, I will compare it to the value that documentary evidence has to the court. This value was well explained by an eminent jurist, the late Mr. Justice G. B. A. Coker of the Supreme Court in the case of [S. B. Fashanu](#) v [M. A. Adekoya](#) (1974) 6 SC 83. In that case, His Lordship had this to say:

*The parties gave evidence and called witnesses and indeed there was on each side a great deal of hard swearing. Undoubtedly, the duty of the court in ascertaining the truth in those circumstances is all but easy and the best logic may be as availing to one of the parties as it is to the other. But there was produced by both parties a large body of documentary evidence containing a number of letters and other documents and, as argued by learned counsel for the plaintiff, it is the duty of the learned trial Judge in a case like the present to test the probability of the case of either of the parties by reference to relevant documents which represent evidence of some more or less permanent or perhaps unassailable character.*

(See pages 91 to 92 of the law report. The emphases are mine)

I am of the humble view that in the same vein, and in today's world, forensic evidence will similarly "represent evidence of some more or less permanent or perhaps unassailable character". The difficulty I envisage will be when there is before the court two contrasting pieces of evidence from an expert. But then that difficulty can be resolved in a manner intrinsic to the judicial process.

Courts of law, when evaluating evidence, rely on oral evidence, and in the process seek to assure themselves (through principles and techniques of the law) of the credibility of witnesses. They rely on principles such as the "Doctrine of Last Seen" in criminal cases, and also on reasoning techniques based on processes of analogy, deduction and, sometimes, eliminative induction. They also rely on circumstantial evidence where it is compelling, cogent and strong. But the beauty of scientific analysis; what expert study, analysis and summation of forensic evidence do, is to give invaluable credence to a point in issue, or confidently disprove that point in contention, such that the court can comfortably make a decision one way or the other. Because specialised study ordinarily guarantees a huge measure of credibility and integrity, the courts will pay equally special attention to such evidence.

And so, to conclude, I will simply say (as I "simply" started off in defining forensic evidence) that the importance of forensic evidence in judicial proceedings in Nigeria is a "**given**", not open to argument! What we should focus on, rather, is the credibility of the expert witness and the integrity of the evidence he/she presents to the court of law and justice.

With this, I rest my case and wish you all a good morning.

THANK YOU