

# Levels of Proof



# What about DNA Evidence?

- ❖ In a homicide case, traces of blood are found on the crime scene
- ❖ The traces conclusively establish that whoever left them is the perpetrator
- ❖ **The only open question is, WHO left the traces?**
  - ❖ One man's DNA profile **matches** with the traces found at the crime scene
  - ❖ The man has no twin brother
  - ❖ The DNA profile has an estimated **statistical frequency of 1 in 100 million**
- ❖ Is that enough to convict?



## Branion v. Gramly (1988)

*Donna Branion died on December 22, 1967. She was strangled and shot at least four times. She was not molested; there were no signs of forced entry into the apartment, from which nothing was stolen. This led the police to doubt that a stranger was responsible. A jury concluded that Donna's husband, John M. Branion, Jr., did the deed. The evidence was circumstantial, but what circumstances!*

## Branion v. Gramly (1988)

- Branion called the police after finding his wife sprawled in a pool of blood. Although a physician, he did nothing to investigate her condition or assist her.
- Ballistics experts determined . . . that the murder weapon was a 9mm,.38 caliber Walther PPK, a rare gun. John Branion, a gun collector, owned a 9mm,.38 caliber Walther PPK.
- Branion had a mistress, a nurse at the hospital where he worked. Branion married his mistress after his wife's death.

The defense was that he had been at the Hospital attending patients until 11:30 a.m. and that, on the way home, he made two stops – one to pick up his son, the other to meet a friend with whom the Branions planned to lunch. The police logged the call informing them of the murder at 11:57 a.m. There was not enough time to drive from the Hospital to his home, with two stops, and to kill his wife before calling the police, Branion insists.

*"[R]easonable doubt . . . is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an **abiding conviction**, to a **moral certainty**, of the truth of the charge."*

*Justice Shawn, Sup. Ct. of Massachusetts, 1850*

# No Hesitation in Matters of the Highest Importance

*“Proof beyond a reasonable doubt must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.”*

*E. J. Devitt et al., Federal Jury Practice and Instructions, 12.10, at 354 (4th ed. 1987).*

# A Substantial Doubt...Which Need Not Have a Reason

*"In order to be reasonable, the doubt must be **substantial as opposed to fanciful**, but it is not essential that a juror be able to give some proper reason for entertaining it; it may exist without his being able to formulate any reason for it."*

*Pennsylvania v. Dauphinee 121 Pa. Super. 565, at 590 (1936).*

# The Ultimate Act of Desperation

*“Reasonable doubt must speak for itself. Jurors know what is reasonable and are quite familiar with the meaning of doubt.”*

*“Judges’ and lawyers’ attempts to inject other amorphous catch-phrases into the reasonable doubt standard, such as matter of the highest importance, only muddy the water.”*

*U.S. v. Glass, 846 F.2d 386 (1988).*



## High Probability of Guilt

“It would be useful, accordingly, if definite limits for moral certainty were established by the authority of the magistracy. For instance, it might be determined whether 99/100 of probability suffices or whether 999/1000 is required. ” (*The Art of Conjecture*, 1713, pt. IV.)



# Ronald Allen's Plausible Story of Guilt

*"No plausible alternative to a plausible story of guilt as the rule of decision in criminal trials" (2010, manuscript)*