

To: The New Jersey Law Revision Commission
From: Mara Pohl, Legislative Law Clerk
Re: Reconsidering When the Statute of Limitations Begins in Cases Involving DNA Evidence as Discussed in *State v. Thompson*, 250 N.J. 556 (2022)
Date: July 11, 2022

MEMORANDUM

Project Summary¹

In New Jersey, the statute of limitations on crimes involving DNA evidence is tolled until the State “is in possession of” both physical evidence from the crime scene and a DNA sample from a suspect.² Before the Legislature amended N.J.S. 2C:1-6(c) in 2002, the statute of limitations began to run the day after an offense was committed.³ The current five-year statute of limitations reflects the reality that cases involving DNA are often delayed because backlogs at the state crime laboratory prevent timely analysis of evidence.⁴

In *State v. Thompson*,⁵ the New Jersey Supreme Court considered whether the statute of limitations in cases involving DNA evidence begins to run when the State possesses the evidence required to identify a suspect through DNA or when the State obtains a match between the DNA evidence taken from the crime scene and a sample of the suspect’s DNA.⁶ The Court also considered whether the State was “in possession of the evidence ‘necessary to establish the identity of the actor’” if technology did not yet exist to allow the matching of that sample to an existing DNA profile.⁷

The Court held that pursuant to N.J.S. 2C:1-6(c), the statute of limitations begins to run when: (1) the State possesses both DNA evidence from the crime scene and a DNA sample from the suspect; and (2) technology exists that allows the State to confirm a DNA match with the physical evidence in its possession.⁸ The Court reversed the judgment of the Appellate Division, which held that the statute begins to run when a match is confirmed.⁹

Statute Considered

N.J.S. 2C:1-6(c), provides in relevant part that:

¹ The subject of this memorandum was brought to Staff’s attention by Comm’r Bernard W. Bell. E-mail from Comm’r Bernard W. Bell to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm’n (June 13, 2022, 07:57 EST) (on file with the NJLRC).

² N.J. REV. STAT. § 2C:1-6(c) (2014).

³ 2001 N.J. Sess. Law Serv. Ch. 308 (West).

⁴ N.J. S. Comm. State., S.B. 1516, Jan. 22, 2001.

⁵ *State v. Thompson*, 250 N.J. 556 (2022).

⁶ *Id.* at 560; N.J. REV. STAT. § 2C:1-6(c) (2014).

⁷ *Thompson*, 250 N.J. at 579 (quoting N.J. REV. STAT. § 2C:1-6(c) (2014)).

⁸ *Id.* at 561-62.

⁹ *Id.* at 569.

[t]ime starts to run on the day after the offense is committed, except that when the prosecution is supported by physical evidence that identifies the actor by means of DNA testing . . . , time does not start to run until the State is in possession of both the physical evidence and the DNA . . . evidence necessary to establish the identification of the actor by means of comparison to the physical evidence.¹⁰

Background

In 2001, an unidentified attacker sexually assaulted a woman in her home.¹¹ The assailant's DNA was collected and sent to the New Jersey State Police Lab (the "Lab") and a DNA profile was created for the sample ("Specimen 12A").¹² In 2002, the Lab entered Specimen 12A into the FBI's national DNA database to facilitate the identification of the suspect.¹³ The State deliberately did not enter certain DNA information contained in Specimen 12A that, based on the existing FBI guidelines, could not be analyzed because it did not contain enough DNA material to cross the analytical threshold.¹⁴ This excluded data was "considered indistinguishable from background fluorescence and [was] not labeled by the software . . . [and] not used for data interpretation."¹⁵ The removal of that data from the sample, however, made Specimen 12A incomplete and precluded it from matching any other DNA profile in the database.¹⁶ In 2004, the State entered the defendant's DNA profile into the FBI database on an unrelated matter but, because of the way Specimen 12A was entered, no match was found.¹⁷

In 2010, the FBI began to allow the type of data that the Lab had withheld from Specimen 12A to be entered into its database.¹⁸ The State did not update its own policies and did not begin to enter this excluded data into the FBI database until 2016.¹⁹ That year, an internal Lab audit flagged the fact that Specimen 12A's entry was incomplete.²⁰ When the previously excluded data was entered into the database, it matched the defendant's 2004 profile.²¹ The defendant was indicted in May 2017, sixteen years after the attack, for several offenses related to the 2001 sexual assault.²²

The defendant moved to dismiss the charges against him and argued that the statute of limitations barred his prosecution.²³ He maintained that the clock began to run when the State

¹⁰ N.J. REV. STAT. § 2C:1-6(c) (2014).

¹¹ *Thompson*, 250 N.J. at 560.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 564 (quoting MING W. CHIN ET AL., FORENSIC DNA EVIDENCE: SCIENCE AND THE LAW § 3.4 (2021)).

¹⁶ *Id.* at 560.

¹⁷ *Id.* (The Court's decision contains inconsistencies: it states that the State entered the defendant's DNA into the FBI database in 2004 but later says that it was 2006. The exact date is not consequential because in either case the statute of limitations would have expired by the time the defendant was identified in 2016.)

¹⁸ *Id.* at 561.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 567.

possessed the physical evidence from the crime scene and his DNA profile.²⁴ The trial court denied his motion and ruled that the Lab did not have the required evidence to confirm the suspect's identity until it updated its policies in 2016 and entered the previously excluded data from Specimen 12A's profile in the FBI database.²⁵ The Court maintained that the comments to the statute reveal the Legislature's intent that "the time period does not begin to run until the prosecution gets that evidence, not only the samples, but the evidence of a match."²⁶

The defendant filed an interlocutory appeal of the trial court's denial of his motion to dismiss, which was subsequently denied by the Appellate Division.²⁷ A jury sentenced the defendant to thirty-three months in prison.²⁸ The Appellate Division reviewed the statutory construction decision *de novo* and affirmed the defendant's conviction.²⁹ The Court ruled that the plain meaning of N.J.S. 2C:1-6(c) was that the statute of limitations began to run when the State matched the physical evidence from the crime scene and the defendant's DNA.³⁰ It stated that "the match itself constitutes evidence sufficient to establish the suspect's identity by comparing the DNA evidence and physical evidence."³¹

The New Jersey Supreme Court granted defendant's petition for certification.³²

Analysis

The Supreme Court relied on established principles of statutory construction and reversed the determination of the Appellate Division, remanding the matter for vacation of the defendant's convictions.³³

The Court rejected the State's argument that N.J.S. 2C:1-6(c) called for the statute of limitations to begin when the State matches the DNA from the crime scene to a specific suspect, explaining that this reading "leads to an illogical interpretation of the statute and renders the second half of the clause superfluous."³⁴ The Court held "that a plain reading of N.J.S. 2C:1-6(c) requires the statute of limitations in cases involving DNA evidence to begin when the State possesses the physical evidence from the crime as well as the DNA sample from the defendant, not when a match is confirmed."³⁵ The Court reasoned that had the Legislature intended for the statute of limitations to begin when a match was confirmed, it would have said so.³⁶ The Court also noted that any other reading "would permit the State to be in possession of physical evidence from a crime scene and DNA evidence from a suspect and yet allow that evidence to go untested for an inordinate amount

²⁴ *Id.*

²⁵ *Id.* at 567-68.

²⁶ *Id.* at 568.

²⁷ *Id.*

²⁸ *Id.* at 568-69.

²⁹ *Id.* at 569.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 570.

³³ *Id.* at 572, 580.

³⁴ *Id.* at 577.

³⁵ *Id.* at 575.

³⁶ *Id.* at 577.

of time, thereby tolling the statute of limitations.”³⁷ The Court found it implausible that the Legislature could have intended this outcome.³⁸

The Court noted that, in 2004, the State possessed both requisite pieces of evidence: the physical evidence from the crime scene and the defendant’s DNA profile from an unrelated case.³⁹ The physical evidence from the crime scene, however, was incomplete and unavailable for analysis until 2010 when the FBI updated its guidelines for the entry of a DNA profile. Therefore, the Court held that while the statute of limitations in cases involving DNA evidence begins when the State possesses both the physical evidence and the DNA sample, circumstances surrounding the State’s ability to analyze the DNA evidence could require a different timeline. The Court observed that

there may be situations in which the science or the generally accepted scientific guidance at the moment those items come into the State’s possession has not advanced so far as to allow for that evidence to actually generate a match. . . . If the science has yet to be developed or if the method of analysis that would lead to a match has not been officially adopted within the scientific community, then regardless of whether the State possesses the evidence, the statute of limitations does not start to run.⁴⁰

The *Thompson* Court determined that the national guidelines which allowed for the analysis of the evidence in the State’s possession were updated in 2010. That the State failed to update its own guidelines until 2016 should not be held against the defendant.⁴¹ The Court held that the statute of limitations began to run in 2010 and therefore the defendant’s indictment was beyond the five-year statute of limitations period.⁴²

Pending Bills

There are several bills pending that concern amendments to N.J.S. 2C:1-6, but none of them involve subsection (c) and the statute of limitations concerning DNA evidence.⁴³

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether it would be useful to modify N.J.S. 2C:1-6(c) to clarify when the State is deemed to be in possession of the evidence “necessary to establish the identification of the actor by means of comparison of the physical evidence,” specifically addressing circumstances in which the technology does not yet exist to allow a usable DNA profile to be created from the evidence, and the impact on the statute of limitations.

³⁷ *Id.* at 576.

³⁸ *Id.* at 576-77.

³⁹ *Id.* at 579.

⁴⁰ *Id.*

⁴¹ *Id.* at 580.

⁴² *Id.*

⁴³ N.J. REV. STAT. § 2C:1-6(c) (2014).