

To: New Jersey Law Revision Commission
From: Whitney Schlimbach, Counsel¹
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: November 7, 2022

MEMORANDUM

Project Summary²

In New Jersey, the time limitations for commencing prosecution for any crime are set forth in N.J.S. 2C:1-6.³ In most cases, the statute of limitations commences the “day after a crime is committed.”⁴ However, if “the prosecution is supported by physical evidence that identifies the actor by means of DNA testing,” the statute of limitations is tolled “until the State is in possession of both the physical evidence and the DNA or fingerprint evidence necessary to establish the identification of the actor by means of comparison to the physical evidence.”⁵

In *State v. Thompson*,⁶ the New Jersey Supreme Court considered whether the statute of limitations in cases involving DNA evidence should be tolled until the State obtains a match between physical evidence from the crime scene and a sample from a matching suspect, rather than when the State is in possession of these two essential pieces of evidence.⁷ The Court held that N.J.S. 2C:1-6 “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.”⁸

The Commission authorized further research and outreach in this area of the law during its July 2022 meeting.⁹ On September 15, 2022, a bill was introduced in the New Jersey General Assembly which addresses the issue raised in *Thompson*.¹⁰ The bill proposes amending N.J.S. 2C:1-6 to start the statute of limitations when “a match between the physical evidence and DNA . . . evidence has been confirmed.”¹¹

¹ Preliminary work on this project was conducted by Mara Pohl, Legislative Law Clerk with the NJLRC.

² 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 Rev. Comm’n (June 13, 2022, 07:57 EST) (on file with the NJLRC).

³ N.J. STAT. ANN. §2C:1-6.

⁴ N.J. STAT. ANN. §2C:1-6c. (“[a]n offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant’s complicity therein is terminated”).

⁵ *Id.*

⁶ *State v. Thompson*, 250 N.J. 556 (2022).

⁷ *Id.* at 560, 579 (holding also that “[i]f 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”).

⁸ *Id.* at 575.

⁹ N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at *5, July 21, 2022, www.njlrc.org (last visited Nov. 02, 2022).

¹⁰ Assembly Bill No. 4481, 220th Leg., 1st Sess. (Sept. 15, 2022).

¹¹ *Id.* (“[c]larifies that statute of limitation is tolled in certain cases until State possesses match of crime scene evidence and suspect’s DNA”).

Statute Considered

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

[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.¹²

Background

Following a sexual assault in 2001,¹³ DNA from the assailant was collected, and a DNA profile was created for the sample (“Specimen 12A”).¹⁴ In 2002, Specimen 12A was entered into the FBI’s national DNA database to facilitate the identification of the assailant.¹⁵ However, based on FBI guidelines in effect at the time, the State did not enter certain DNA information contained in Specimen 12A.¹⁶ Excluding the information rendered Specimen 12A incomplete and precluded it from matching any other DNA profile in the database.¹⁷ As a result, although the DNA profile for Thompson (Defendant) was entered into the FBI database on an unrelated matter in 2004, no match was found.¹⁸

In 2010, the FBI “updated its guidance to explicitly allow the exclusionary data withheld from Specimen 12A to be entered” in the database.¹⁹ The State did not update its own policies at that time, and only began to enter this excluded data in 2016.²⁰ When the previously excluded data from Specimen 12A was entered into the database in 2016, it matched Defendant’s 2004 profile.²¹ Defendant was indicted in May 2017, sixteen years after the attack, for several offenses related to the 2001 sexual assault.²²

Defendant moved to dismiss the charges against him on the basis that the prosecution was time-barred pursuant to N.J.S. 2C:1-6c., arguing that the statute of limitations commenced in 2004 when the State possessed the physical evidence from the crime scene and his DNA profile.²³ The

¹² N.J. REV. STAT. § 2C:1-6(c) (2014).

¹³ *Thompson*, 250 N.J. at 560.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (“[t]he DNA profile . . . entered into CODIS did not include certain exclusionary data – data the [New Jersey State Police Lab] believed was inconclusive based on its interpretation of The FBI’s DNA database policies.”).

¹⁷ *Id.* at 560.

¹⁸ *Id.* at 564.

¹⁹ *Id.* at 561.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 567 (“the court reasoned that to calculate the start-time for a limitations period under N.J.S.A 2C:1-6(c), the proper inquiry ‘is what was necessary for the State to establish the identification of this defendant to the specimen that they had in their possession.’”).

trial court denied the motion and Defendant was convicted after trial of “fourth-degree criminal sexual contact and fourth-degree criminal trespass.”²⁴

On appeal, Defendant again raised the statute of limitations argument. The Appellate Division affirmed the trial court, holding that the statute’s plain meaning required the statute of limitations to begin “to run at the moment the confirmatory sample evidence was matched by the State.”²⁵ The New Jersey Supreme Court granted defendant’s petition for certification.²⁶

Analysis

The Supreme Court reversed the Appellate Division, holding “that a plain reading of N.J.S.A. 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.”²⁷ In coming to its conclusion, the *Thompson* Court attributed to the terms “possession,” “necessary,” “establish,” and “comparison” their “generally accepted meaning” and read the terms “in context with related provisions so as to give sense to the legislation as a whole.”²⁸

The *Thompson* Court pointed out that commencing the statute of limitations when the State possesses “(1) the physical evidence from the crime and the DNA of the suspect” is logical “because the expectation is that once law enforcement possesses the DNA from the crime and a suspect’s DNA, those samples will be compared to determine whether there is a match.”²⁹ The Court found it “unlikely that the Legislature contemplated a situation in which the State would possess both items necessary to generate a match” but would not do so.³⁰

The Court further concluded that it “was certainly not the Legislature’s expectation” that the statute would “permit the State to be in possession of physical evidence from [both pieces of] evidence . . . and yet allow that evidence to go untested for an inordinate amount of time, thereby tolling the statute of limitations.”³¹ Therefore, the *Thompson* Court rejected the State’s argument that the phrase “necessary to establish the identification” indicated that the statute of limitations begins “when the State is in possession of a match” between the crime scene evidence and a suspect’s DNA.³²

With respect to the calculation of the statute of limitations in *Thompson*, the State possessed both the physical evidence from the crime scene (Specimen 12A) and the DNA of the suspect once Defendant’s DNA profile was entered into the FBI database in 2004.³³ However, the Court

²⁴ *Id.* at 568.

²⁵ *Id.* at 569-70 (holding also that Defendant “was not prejudiced by the statute of limitations because . . . DNA evidence is uniquely reliable and can be used long after commission of a crime”).

²⁶ *Id.* at 570.

²⁷ *Id.* at 575.

²⁸ *Id.*

²⁹ *Id.* at 576.

³⁰ *Id.*

³¹ *Id.* at 576-77.

³² *Id.* at 577.

³³ *Id.* at 579.

acknowledged that “a lack of clarity . . . regarding the utility of including exclusionary data below a certain threshold within DNA profiles” resulted in Specimen 12A being entered into the database as an incomplete DNA profile.³⁴

The *Thompson* Court determined that, “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.”³⁵ Consequently, the New Jersey State Police Lab was “on notice and effectively had all the evidence it needed as well as the scientific capability and guidance to generate a match” when the FBI issued the updated policy related to exclusionary data in 2010.³⁶

Therefore, the *Thompson* Court held “that the statute of limitations . . . began to run in 2010,” and required the Defendant’s convictions be vacated as “[t]he charges arising from the 2001 assault . . . [we]re time-barred” pursuant to N.J.S. 2C:1-6.³⁷

Pending Bill

There is currently a bill pending that directly addresses the issue raised in *Thompson*.³⁸ It was introduced in the New Jersey General Assembly and referred to the Assembly Judiciary Committee on September 15, 2022.³⁹ The bill proposes adding the underlined language to subsection c. of N.J.S. 2C:1-6:

. . . time does not start to run until the State is in possession of both the physical evidence and the DNA or fingerprint evidence necessary to establish the identification of the actor by means of comparison to the physical evidence, and a match between the physical evidence and DNA or fingerprint evidence has been confirmed.⁴⁰

After noting the New Jersey Supreme Court’s interpretation of the statutory language in *State v. Thompson*,⁴¹ the Sponsor’s Statement accompanying the bill explains that the proposed amendment to N.J.S. 2C:1-6 “clarifies that the statute of limitations begins to run when a match between the physical evidence and DNA . . . evidence has been confirmed.”⁴²

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 580.

³⁷ *Id.*

³⁸ *See supra* at p.1.

³⁹ A.B. 4418, 220th Leg., 1st Sess. (Sept. 15, 2022), available at <<https://www.njleg.state.nj.us/bill-search/2022/A4481>>.

⁴⁰ Sponsor’s Statement to A.B. 4418, 220th Leg., 1st Sess. (Sept. 15, 2022), at 2.

⁴¹ The Sponsor’s Statement stated:

[i]n *State v. Thompson*, . . . the New Jersey Supreme Court interpreted the exception language of subsection c. of N.J.S.A.2C:1-6 to mean the Legislature intended that the statute of limitation in cases involving DNA evidence begins “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.”

Id.

⁴² *Id.*

Conclusion

In light of the pending bill that directly addresses the issue of statutory interpretation raised in *State v. Thompson*,⁴³ Staff seeks guidance from the Commission regarding whether it would like Staff to continue research and outreach in this area or to conclude work while the Legislature is actively working in the area.

⁴³ *Thompson*, 250 N.J. at 550 (“[t]he question before the Court in this matter of statutory interpretation is whether the limitation period begins to run when the State is in physical possession of the two items noted, or when the State obtains a match between the DNA evidence from the crime and the defendant’s DNA sample.”).