

Legally Speaking  
State v. Prade 2010-Ohio-1842  
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## How Many DNA Tests Does One Prisoner Get?

A fundamental axiom of a criminal trial is that the accused is presumed innocent until proven guilty beyond a reasonable doubt. Once convicted and sentenced, though, many prisoners continue to try and establish their innocence through what is called post-conviction relief. An application for post-conviction relief is an attempt to re-open a case for a variety of reasons. The vast majority of such requests are denied, and the legislature has really cracked down on how often these applications even can be filed. The burden of proving the right to post conviction relief is on the convicted person.

Last month the Ohio Supreme Court tackled an interesting post-conviction relief case involving DNA testing. DNA testing has changed the face of criminal trials. And the technology keeps getting more sophisticated. The case is State v. Prade. Here's what happened.

Douglas Prade's ex-wife, Margo, a doctor, was killed in her van while parked outside her medical office. At the time, Prade was a captain on the Akron police force. Prade was charged with Dr. Prade's murder. At his trial, the key piece of physical evidence was a bite mark the killer had made on Dr. Prade's arm, through her lab coat and blouse. Based on then-existing technology, the DNA evidence tested excluded Prade as the biter. But there was significant additional evidence in the case, and Prade was convicted and sentenced to life in prison.

In 2003, the state legislature passed Ohio's DNA testing statutes. Prade filed applications for post-conviction DNA testing in 2004 and 2008. He wanted a newer, more sophisticated DNA test. Under the law, an inmate cannot get a new DNA test if a prior DNA test was definitive. And even if the convicted can show the prior DNA test was not definitive, the inmate still can't have the new test unless he can also show that additional DNA testing would be outcome determinative in light of all the evidence—a very high standard to meet.

The trial court denied both of Prade's applications for post-conviction DNA testing on the grounds that Prade had had a definitive DNA test the first time, and a new test could not be outcome determinative because Prade had been excluded as the source of the tested DNA, and still found guilty. The court of appeals affirmed this decision, but the Ohio Supreme Court reversed in a 4-2 decision (only 6 justices participated in the case due to the death of Chief Justice Moyer).

In an opinion written by Justice Evelyn Stratton, the majority first had to determine whether the original DNA test was definitive, since that is key to the right to a new test. The law in effect at the time did not define the term "definitive". When that happens, it is up to the court to provide the definition.

The trial court and the appeals court both ruled that the first DNA test was definitive because Prade was excluded as a result of the testing. But the Supreme Court took a much closer look at this finding, and disagreed that the test was definitive. For a host of technological reasons too complex to detail here, the only DNA identified from then-available testing methods were those of the victim. So Prade was not excluded as

the “biter” in any legally significant sense—the exclusion included everyone in the world except the victim herself. For this reason the majority found the exclusion was meaningless, and therefore the test could not be deemed definitive. Newer DNA testing methods can now identify DNA from persons other than the victims in circumstances like those presented in this case. So the majority held that a DNA test is not “definitive” “when a new DNA testing method can detect information that could not be detected by the prior DNA test”

Even though the high court reversed the trial court on the “definitiveness” issue, the Court felt the outcome-determinative part of the case had not been properly considered, and sent the case back to the trial judge for that purpose.

Despite the holding in this case, Justice Stratton made one thing crystal clear—the Court was **not** holding that every time new DNA testing evolves, inmates who ask will get new tests. This decision is limited “to situations in which advances in DNA testing have made it possible to learn information about DNA evidence that could not even be detected the earlier trial.”

Justice Terrence O’Donnell issued a very strong dissent in this case. He concluded that when the General Assembly passed the postconviction DNA testing statutes, it never intended to provide for “the constant re-examination of DNA samples based on scientific advancements”. He would interpret the word “definitive” as meaning “final”.

“ A definitive DNA test is one that supplies a final answer in identifying the biological evidence tested,” he wrote. “The legislature could have provided for courts to

consider advances in testing technology in determining whether prior tests were definitive, yet it chose not to do so. Instead, by barring applications for retesting when there has been a prior definitive test, the legislature signaled its intent to uphold the finality of convictions.” In this case, he agreed with the trial court that Prade had gotten his definitive DNA test, and would not allow him another.