Supreme Court Opens the Door to Post-Conviction Claims Under 42 U.S.C. §1983
For State Prisoners Seeking DNA Testing


By Shadi Salehi

More than six years after being convicted of murdering his girlfriend and her two sons in their Texas home, Henry Skinner attempted to have DNA testing done on various items of physical evidence from the crime scene—testing, he claimed, should have been completed long ago during trial preparation. Skinner brought this claim under a then newly enacted state statute that allowed prisoners to obtain post-conviction DNA testing under certain circumstances. After a Texas state court denied his request, he turned to federal court, claiming injunctive relief under 42 U.S.C. § 1983, using a Fourteenth Amendment Due Process challenge.

The issue made its way up to the U.S. Supreme Court following the district court’s dismissal of Skinner’s claim and the Fifth Circuit’s affirmation of this dismissal. The Supreme Court, in a 6-3 decision, reversed the Fifth Circuit’s ruling, holding that Skinner’s claim was indeed cognizable under § 1983.

The National District Attorneys Association submitted a Brief of Amicus Curiae in support of Respondent, District Attorney Lynn Switzer.

The bodies of homicide victims Twila Busby and her two sons, Elwin Caler and Randy Busby, were found in the house they shared with Skinner in Pampa, Texas, in December 1993. Skinner argued that he was unable to commit the murders because he claimed to have been incapacitated at the time, after consuming large amounts of alcohol and codeine. He, instead, suggested Busby’s uncle was the likely perpetrator of the crimes.

Among the items tested for DNA by the State were fingerprint evidence, blood from Skinner’s clothing, and some blood and hair from one of the victims’ back and cheeks. Skinner’s trial counsel did not request additional testing of biological evidence, despite having knowledge of the existence of untested evidence. Such evidence included knives from the scene of the murders, an axe handle found next to Twila Busby’s corpse, vaginal swabs, fingernail clippings, and additional hair samples. Following his 1995 trial and conviction for the three murders, Skinner was sentenced to death by a Texas jury.

Over the next few years, Skinner sought post-conviction relief at both the state and federal level, but was unsuccessful. In 2001, six years after his conviction and death sentence, Skinner took advantage of an opportunity to seek further DNA testing in his case, with the enactment of Article 64 in the Texas Code of Criminal Procedure. This Texas statute was enacted to allow prisoner convicts to obtain post-conviction DNA testing, under limited, enumerated circumstances. In order for Article 64 to apply, a prisoner must meet one of two thresholds: (1) “that, at trial, testing was either
contention that Skinner’s challenge is jurisdictionally barred. The Court made specific reference to, and rejected, respondent Switzer’s With respect to the issue of subject-matter jurisdiction, the Court referred to Skinner’s previous attempts to obtain DNA testing, complying with the Federal Rules of Civil Procedure. Skinner filed for his § 1983 claim.

As part of its reasoning, the majority looked to the complaint Skinner filed for his § 1983 claim. The Court’s opinion states that the complaint sufficiently laid out the federal claim and, therefore, complied with the Federal Rules of Civil Procedure. In his complaint, Skinner alleged he was denied his right to due process as a result of the State’s “refusal to release the biological evidence for testing.” The Court referred to Skinner’s previous attempts to obtain DNA testing, possibly as a way of demonstrating some merit to his due process claim. It also stressed the fact that Skinner “first resorted to state court,” thus placing himself in a better position “to urge in federal court the ‘inadequacy of the state-law procedures available to him in state postconviction relief.’”

With respect to the issue of subject-matter jurisdiction, the Court made specific reference to, and rejected, respondent Switzer’s contention that Skinner’s challenge is jurisdictionally barred. It distinguished two seemingly relevant cases in which there was no subject-matter jurisdiction, declaring “a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action.” The case at hand, according to the Court, “falls within the latter category,” and thus, provides federal-court subject-matter jurisdiction.

The Court also quickly dismissed any contentions that the ruling in this case would affect claims brought under Brady v. Maryland, 373 U.S. 83 (1963). It characterized Brady evidence as being “always favorable to the defendant and material to his guilt or punishment,” distinguishing it from DNA testing results, which could incriminate, exculpate, or do neither.

Perhaps the most significant portion of the Court’s opinion is its emphasis on the uncertainty of DNA results, in terms of how they impact an individual case. Essentially, the Court stated that because the DNA results could turn out to be exculpatory, incriminating, or inconclusive, an order merely requiring the tests to be carried out would not “necessarily imply” the invalidity of Skinner’s conviction. The Court noted that the issue at hand is not whether Skinner will actually prevail on the procedural due process claim he seeks to bring, but rather “whether his complaint was sufficient to cross the federal court’s threshold,” which the Court determined it was. As the Court pointed out, despite its ruling, the DNA results could very well inculpate Skinner, thus making the outcome here “hardly inevitable.”

With a vastly different interpretation as to the availability of § 1983, dissenting Justice Thomas, joined by Justices Kennedy and Alito, wrote that the requirements set forth by Congress with respect to filing federal claims were not met by Skinner. Article 28 of the United States Code requires a state prisoner to first “exhaust[t] the remedies available in the courts of the State” before seeking relief in federal court. As the dissent pointed out, such legislative requirements guarantee state courts the opportunity to correct state-conviction errors, in addition to later ensuring they receive due respect when federal challenges are brought. In an attempt to demonstrate the majority’s flawed reasoning, Justice Thomas stated that “[h]aving a procedural challenge under § 1983, Skinner undermines these [legislative] restrictions.” Additionally, the dissent charged the majority with creating a “roadmap” for state habeas claimants desiring to relitigate their claims under § 1983—something that is certain to result in yet another flood of federal suits.

The Skinner opinion’s impact on child abuse prosecution may be significant. Much of its effect, of course, will be determined by the types of cases brought before the courts. DNA evidence plays a major role in many child abuse cases, and a ruling such as this will certainly open the doors to a larger number of federal post-conviction claims seeking DNA testing. It is unlikely that a large percentage of post-conviction DNA tests would yield exculpatory results. From a different perspective, however, ensuring that adequate DNA testing is carried out during the pretrial stage may be one way to avoid post-conviction claims under § 1983 and like federal statutes. Nonetheless, it seems likely that the Supreme Court’s decision will add a great deal of time, energy, and expense toward the workload of countless prosecutors and investigators, nationwide.

1 Shadi Salchi is a Law Clerk with the National Center for Prosecution of Child Abuse, a program of the National District Attorneys Association.
3 Id. at 5.
4 Id. at 6.
5 Id.
6 Id. at 3.
9 Id.
11 Id. at 4.
12 Id.
13 Id., FN3
14 Id. at 4.
15 Id.
16 Id.
Id. at 5.


21 Id. at 5.

22 Id.

23 Id. (Switzer’s office prosecuted Skinner, and also had custody of the evidence Skinner was requesting to be DNA-tested.)

24 Id.

25 Id. (citing 363 Fed.Appx. 302 (2010) (per curiam)).

26 Id. at 6.

27 Id. at 3.

28 Id. at 6.

29 Id. at 6 (The Court references the Federal Rules of Civil Procedure in order to demonstrate that nothing more than a “short and plain” statement of the plaintiff’s claim is required under the Rules, and that the plaintiff here was successful in providing the necessary information in his federal complaint).

30 Id.

31 Id. at 6.

32 Although the majority’s opinion does not explicitly state whether the State of Texas violated Skinner’s Fourteenth Amendment right to due process, its references to Skinner’s prior attempts to obtain DNA testing seem to indicate some degree of empathy, perhaps resulting in an implied validation of his due process claim.

33 Id. at 6, FN8.

34 Id. (citing District Attorney’s Office for Third Judicial Dist. v. Osborne, 557 U.S. ---, --- (2009) (slip op., at 18)).

35 Id. at 7.

36 Id. at 7.

37 Id. at 7.

38 Id. at 9.

39 Id. at 10.

40 Id.


42 Id. at 3.

43 Id. at 6.

44 Id.

45 Id. at 8.


49 Id. at 13.

50 Id. at 13.

51 Id. at 13.

52 Id. at 13.