08-6 DISTRICT ATTORNEY'S OFFICE V. OSBORNE

DECISION BELOW:521 F.3d 1118

LOWER COURT CASE NUMBER: 06-35875

QUESTIONS PRESENTED:
William Osborne was charged with kidnapping, sexual assault, and physical assault. He had the assistance of a competent lawyer who made a reasonable strategic decision to forgo independent DNA testing of the state's biological evidence. He was convicted after an error-free trial. Now, years later, Osborne has filed an action under 42 U.S.C. § 1983, seeking access to the biological evidence for purposes of new DNA testing. The questions presented are:

1. May Osborne use § 1983 as a discovery device for obtaining postconviction access to the state's biological evidence when he has no pending substantive claim for which that evidence would be material?

2. Does Osborne have a right under the Fourteenth Amendment's Due Process Clause to obtain postconviction access to the state's biological evidence when the claim he intends to assert - a freestanding claim of innocence - is not legally cognizable?

CERT. GRANTED 11/3/2008