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# Judge throws out 1985 murder conviction of death row inmate Anthony Apanovitch; prosecutor plans to appeal



Anthony Apanovitch, in a 2000 photo, had his aggravated murder conviction thrown out Thursday. A judge ordered a new trial, citing DNA evidence. (Lonnie Timmons III/The Plain Dealer)

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[By John Caniglia, The Plain Dealer](http://connect.cleveland.com/user/jcaniglia/index.html) (<http://connect.cleveland.com/user/jcaniglia/index.html>)

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CLEVELAND, Ohio -- A Cuyahoga County judge Thursday threw out the 1985 murder conviction of death row inmate Anthony Apanovitch based on DNA evidence, and ordered a new trial into the slaying of Mary Anne Flynn.

**Common Pleas Judge Robert McClelland**



<http://media.cleveland.com/court-justice/photo/apanovitch-6-ffb26d2f9275d19b.jpg>

Mary Anne Flynn

Photo courtesy of the Flynn family

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[RobertC.McClelland-judgedetails.aspx](http://cp.cuyahogacounty.us/internet/ID-150-JudgeName-RobertC.McClelland-judgedetails.aspx)) also acquitted Apanovitch, now 59, of one count of rape and dismissed another count of rape. McClelland ordered Apanovitch to be released on \$100,000 personal bond, pending the new trial.

Based on the decisions involving the rape allegations, the new trial would focus solely on the charges of aggravated murder and aggravated burglary.

County Prosecutor Timothy J. McGinty said his office will seek to block the judge's ruling and keep Apanovitch behind bars. McGinty said he will take the case to **the Ohio 8<sup>th</sup> District Court of Appeals** (<http://appeals.cuyahogacounty.us/>).

"Setting a personal bond -- which means the defendant doesn't have to post a dime -- on someone charged with aggravated murder, aggravated burglary, and two counts of rape is unprecedented in the history of this courthouse," McGinty said.

"These shockingly and disturbingly brutal crimes were proved. This is hardly a crime meriting personal bond, which endangers the safety of the public. Worse yet, Apanovitch committed these crimes while on probation for a sexual assault, and he also had been to prison for aggravated robbery."

In his nine-page ruling, McClelland cited a hearing in October in which experts testified about the DNA in the case.

"The evidence at the hearing is substantially different than at the original trial, and the earlier decision is, at least in part, clearly erroneous and would work a manifest injustice."

The judge said a suspect's DNA was found in two places in Flynn's body. One sample did not contain enough material for a valid result, according to McClelland's ruling.

The judge said Apanovitch's expert, Dr. Richard Staub, stressed that the other sample excluded him.

McGinty disputed that. His office said initial DNA tests proved that Apanovitch was the killer. A subsequent test was inconclusive.

"Since his conviction, DNA testing was perfected and proved that the jury was absolutely right all along by the odds of 1 in 285 million Caucasians that Apanovitch committed these crimes," the prosecutor said.

Mark DeVan, one of the attorneys who represents Apanovitch, hailed the decision. He said Apanovitch will not simply walk out of prison. He said a suitable place for him to live would have to be found, and he would have electronic monitoring.

"Mr. Apanovitch is grateful the court reviewed the evidence and granted him a new trial," DeVan said. "He has maintained his innocence for 30 years."

Attorneys from **Crowell and Moring** (<http://www.crowell.com/>), a Washington, D.C., firm that also represents Apanovitch, could not be reached.

Prosecutors said Apanovitch raped, beat and strangled Flynn, a 33-year-old nurse-midwife, on Aug. 24, 1984 in Cleveland. Authorities said the attack took place at her Archwood Avenue home, which she had hired Apanovitch to paint. Witnesses testified he intimidated and lusted after her, and he gave police conflicting statements.

But the issue has gained a great deal of publicity over the years. It took off when Ohio Supreme Court Justice Craig Wright wrote to the state parole board in 1996, saying he had changed his mind about the case and believed that Apanovitch's sentence should be reduced to life imprisonment. Wright had been the author of the 4-3 opinion upholding Apanovitch's conviction and death sentence.

"I'm pretty numb right now," said Martin Flynn of Shaker Heights, Mary Anne's older brother. "I'm stunned by the whole thing. I didn't see it coming. Every time something

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like this comes up, we get dragged right back into it. I still have the tremor in my stomach that I had when I found my sister's body. This is a nightmare that you can't wake up from."

McGinty agreed: "Death penalty cases have been subjected to ridiculous levels of scrutiny, creating decades of absurd delay at the cost of millions of dollars and countless hours of agony and frustration for families of victims who have not received the justice they deserve.

"We have been fighting for Mary Anne and her family for 30 years, have won appeal after appeal, and will continue to do so. This is only a temporary setback."

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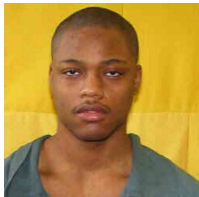
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Steve Wolf

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- 1) Eyewitness testimony from a local bar has Apanovitch speaking about the crime he was going to commit
- 2) Apanovitch had the same blood type as the perpetrator
- 3) Apanovitch had a scratch consistent with the skin found under Mary Anne's fingernail
- 4) Apanovitch placed a signed agreement on her table the day AFTER he killed her (meaning he already made an unlawful entry)
- 5) Apanovitch's fingerprints were all over her house, despite never having entered Mary Anne's residence

In the history of criminal law dating back to the founding of our country, DNA evidence (and the standards of which it is treated) has only been available for the last 25 years.