

## Supreme Court Holds DNA Samples Upon Arrest Constitutional

A couple of weeks ago in what Justice Alito called the “most important criminal procedure case that this Court has heard in decades,” the US Supreme Court held that a law requiring anyone arrested for a serious felony to submit to a DNA sample is not an unreasonable search under the Fourth Amendment.<sup>1</sup> This holding has sparked intense debate between those who believe such information is valuable and necessary in resolving unsolved crimes, while others see it as an impermissible intrusion of our person and civil liberties that is a precursor for further eroding of our Constitutional safeguards. So who is right? First, a little background.

Alonzo Jay King was arrested in 2009 on a felony assault charge. Under the Maryland DNA Collection Act, he was forced to submit to a cheek swab to obtain his DNA. This law, which is similar to what 25 other states have, takes the DNA samples and places them into CODIS (the Combined DNA Index System), a federal data base that law enforcement uses to link DNA samples to unsolved crimes. King ended up pleading guilty to a reduced misdemeanor. The authorities used his DNA to trace him to an unsolved rape case from 2003. His defense attorneys moved to suppress the DNA results but the trial court denied the motion and his conviction was appealed. The Maryland Court of Appeals overturned the conviction holding that police needed a warrant or at least a reason to suspect him of another crime before getting a DNA sample. That's how the matter got before the nation's highest court.

Justice Kennedy, writing for the narrow 5-4 majority, believes that DNA samples are akin to fingerprints (unique personal identifying marks) and a faster, more accurate, and less intrusive process. After all, if it helps solve crimes and take violent offenders off the streets, isn't it worth it even if it may run a little afoul of the Fourth Amendment? Would the Founding Fathers who drafted the Bill of Rights approve of the 'fingerprinting of the 21<sup>st</sup> Century?’ I believe the answer to both questions is no.

The problem I have with the supporters of this ruling is that they are looking at it the wrong way. It doesn't matter how many crimes this may help solve or how many bad people it takes off the street and puts behind bars. The question is is it Constitutional? If it isn't, then no amount of positive results it may bring will justify it. After all, we could get criminals off the street merely by having the police do house checks (like they do in Japan). The police would be coming across any number of drug houses, meth labs, domestic assaults, wanted felons, and maybe even some missing children or the occasional kidnap victim. We don't do these things because we have a Constitution that says otherwise. We need the Bill of Rights in order to keep the government in check and from running amuck abusing their power. The ends do not justify the means.

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<sup>1</sup> *Maryland v King*, 133 S Ct 1958 (2013)

The other problem that I have with the case is that it didn't draw any distinction nor set any boundaries. Is this rule of law limited to forced DNA sampling for only violent offenders, or can states pass laws requiring it for anyone arrested for any felony, or worse yet any crime? Where does it all end? The Court didn't tell us. Perhaps over the next few years when more states add more intrusive DNA legislation we'll get our answer. Justice Scalia in dissent with the liberal wing of the Court, called this a "suspicionless search."

The majority erroneously analogized collecting DNA samples to a search incident to arrest and identification. Search Incidents to Arrest are for the safety of the police and jail population, i.e. to make sure that the arrestee doesn't have any weapons or dangerous items that he may be bringing into the jail (and to protect police from claims of lost or damaged property). The identification claim is also bogus in that not only did they have sufficient information as to who King was, but the DNA sample was not completed until after his arraignment (three days after his arrest) and by the time the DNA sample was taken, collected, sent off for lab analysis and returned, several months had passed. Clearly they were searching King for evidence of a crime that a) was unknown at the time, and b) they did not have probable cause to believe he committed it. The ruling flies in the face of the very safeguards that the Fourth Amendment provides. Yes, it will aid in solving crimes, but it will also result in the government becoming more powerful and more intrusive which means we all lose more privacy. For these reasons the Court's decision is wrong. The ends do not justify the means.

This is troubling as it is surprising since the Court had seemingly been swinging in the direction of protecting against unreasonable search and seizures the last couple of years.<sup>2</sup> Currently, the Michigan legislature has bills pending that would require anyone arrested for a felony to submit to DNA testing for the purposes of identification.<sup>3</sup>

What say you?

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<sup>2</sup> In *US v Jones*, 132 S Ct 945 (2012), the Court held that the police using a GPS device on a car to track a suspect was unconstitutional. In *Florida v Jardines*, 133 S Ct 1409 (2013), the Court held that if the police, without a warrant, bring a drug dog to your house that is a trespass.

<sup>3</sup> 2013 MI SB 105, 106, and 107.