Court Upholds Maryland Statute Requiring DNA Samples from Suspects Arrested for Violent Crimes : Maryland v. King

Description

Attorney Karen J. Kruger

The United States Supreme Court recently ruled in favor of the State of Maryland in its opinion in *Maryland v. King,* a case that evaluated the constitutionality of the taking of a DNA sample from a person arrested, but not yet convicted of a serious crime. In the case before the Court, a 53-year-old woman was raped and robbed in Salisbury, Maryland, but the crime went unsolved for six years. In 2009, police arrested Alonzo J. King and charged him with second-degree assault, a felony but not one related to the rape crime. Taking advantage of the Maryland law that allowed warrantless DNA tests following some felony arrests, police took a cheek swab of Kingâ??s DNA, which matched a sample recovered as evidence from the 2003 Salisbury rape. As a result, King was convicted of rape and sentenced to life in prison.

In his defense, King argued that the taking of the DNA sample without a warrant violated the Fourth Amendmentâ??s prohibition on unreasonable searches and seizures. The Maryland Court of Appeals agreed, and ruled that the statute that permitted the taking of the sample was unconstitutional. The State of Maryland requested that the Supreme Court review that decision. The Supreme Court reversed the judgment of the Maryland Court of Appeals, and reinstated Kingâ??s conviction for rape.

The Maryland DNA Collection Act authorizes Maryland law enforcement authorities to collect DNA samples from â??an individual who is charged with . . . a crime of violence or an attempt to commit a crime of violence; or . . . burglary or an attempt to commit burglary.â?• The Act also places restrictions or limitations on when and how law enforcement can use the sample, and is otherwise highly regulated.

The issue before the Supreme Court was whether, when officers make an arrest for a serious offense that is based on probable cause, it is reasonable under the Fourth Amendment to require the arrestee to submit to a cheek swab as part of booking procedures for identification, including sending the sample to a database used for matching DNA of suspects to DNA recovered at crime scenes.

The Fourth Amendment safeguards the â??right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizuresâ?• by the government. This means police need a warrant based on probable cause and particularized individual suspicion before searching a person or his or her property, with a few exceptions. Whether a governmental intrusion constitutes a â??searchâ?• depends upon the reasonableness test originally described in *Katz v. United States*. The test considers whether the person has a subjective expectation of privacy in the area to be searched and whether society is prepared to deem that expectation reasonable. In evaluating the constitutionality of the search, a court must balance the personâ??s reasonable expectation against the government interest in conducting the search or seizure. Where the governmentâ??s interest is compelling, or the expectation of privacy is not present, the warrant requirement is excused because the search is reasonable.

In analyzing this issue the *King* Court concluded that obtaining a swab from the inside of a personâ??s cheek is a â??searchâ?• for Fourth Amendment purposes, but also noted that not all warrantless searches are unreasonable under the Constitution. Such situations are evaluated by weighing the reasonable expectation of privacy against the governmentâ??s interest in conducting the search. The Court analyzed the police taking of a DNA sample as follows:

â??In light of the context of a valid arrest supported by probable cause respondentâ??s expectations of privacy were not offended by the minor intrusion of a brief swab of his cheeks. By contrast, that same context of arrest gives rise to significant state interests in identifying respondent not only so that the proper name can be attached to his charges but also so that the criminal justice system can make informed decisions concerning pretrial custody. Upon these considerations the Court concludes that HN46 DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. When officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arresteeâ??s DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.â?•

The Court also recognized that the taking of a DNA sample by cheek swab is a minimal intrusion into a personâ??s body, underscoring the reasonableness of the government action. Justice Scalia, along with three other dissenting justices, vehemently disagreed noting that â??â?¦I doubt that the proud men who wrote the charter of our liberties would have been so eager to open their mouths for royal inspection.â?•

Numerous *amicus curiae* briefs were filed in this case on both sides of the issue. Law enforcement advocates posited that the taking of a DNA sample upon arrest either did not constitute a search at all, since one cannot realistically have a privacy interest in his or her DNA that is constantly being shedded everywhere, or that the taking fit into one of the well-established exceptions to the warrant requirement. The two â??exceptionâ?• candidates were the search incident to arrest exception and the â??special needsâ?• exception. The search incident to arrest exception allows a law enforcement officer to thoroughly search the person and belongings of one who has been arrested to preserve evidence and insure safety. The reasonableness of this search arises from the probable cause on which the person is arrested and, generally speaking, may be undertaken without a warrant.

Another possibly applicable exception to the Fourth Amendment warrant requirement in this context was explained in *National Treasury Employees Union v. Von Rabb.* This exception is known as the â??special needsâ?• doctrine, which requires the government to demonstrate that the government interest outweighs the intrusion. The â??special needsâ?• exception could have provided a basis for giving law enforcement the authority to take DNA without a warrant because of the governmentâ??s need to identify persons in custody, and its special needs to investigate and prosecute crime.

The Court essentially considered the significant government interest in the identification of arrestees and DNA identificationâ??s unmatched potential to solve crimes accurately without resorting to the special needs doctrine. The Court simple balanced the governmentâ??s interest against the personâ??s expectation of privacy, found that the governmentâ??s interest carried the heavier weight, and thus deemed that the DNA search was reasonable and did not offend the Fourth Amendment. The majority opinion has been subjected to significant criticism both by the dissenting justices and the

media. Opponents point out that governmental searches should be limited to situations in which the government has reasonable cause and individualized suspicion that evidence of a crime will be found. The wholesale taking of DNA evidence from those arrested flies in the face of this principle. Moreover, opponents express concerns about abuse and overreaching in how the government uses the evidence obtained.

Contrariwise, supporters of the *King* decision point out that increased DNA screening can assure that the guilty are caught and convicted and that the innocent are exonerated. If the police had not DNA evidence to prove that Mr. King was a rapist he would have remained at large.

It is important to remember that the *King* decision is based on a Maryland statute that specifically provided for the taking of DNA evidence from persons arrested for serious crimes such as assault, rape, murder and burglary. The dissenting justices somewhat sarcastically note the theoretical benefits of â??the taking of DNA sample from anyone who flies on an airplaneâ?¦applies for a driverâ??s license, or attends public school,â?• â?? none of which is permitted by the Maryland law. Indeed, the fear of DNA taking in connection with a traffic stop or minor misdemeanor, at least under this statute is unwarranted. This then, is a question for another day. To read the Courtâ??s full opinion, click here.

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Daigle Law Group thanks Attorney Karen J. Kruger for preparing this summary. Attorney Kruger, of Funk & Bolton, wrote an amicus curiae brief on behalf of several clients outlining for the Court the importance of the use of DNA evidence to identify suspects, and for the effective enforcement of criminal law. Joining Funk & Bolton clients Maryland Chiefs of Police Association, Inc. and Maryland Sheriffsâ?? Association, Inc., were the Police Chiefsâ?? Association of Prince Georgeâ??s County, Maryland Municipal League Police Executive Association, International Association of Chiefs of Police, Major Cities Chiefs Association, Mayor and City Council of Baltimore, and Montgomery County, Maryland. Karen is a great friend of Daigle Law Group, LLC. and her bio can be found by clicking here.

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