



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 368

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COLLECTION AND ANALYSIS OF DNA SAMPLES OBTAINED FROM ARRESTED PERSON

Reference:

Maryland v. Alonzo Jay King, Jr.
United States Supreme Court
569 U.S. _____ (2013)
June 3, 2013

FACTS:

KING was arrested in 2009 and charged with first- and second- degree assault for menacing a group of people with a shotgun. Maryland is one of the fifty states that require the collection of DNA. Some of these states limit the practice to felony offenders. Maryland statutes authorize law enforcement authorities to collect DNA samples from "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." A sample of KING's DNA was obtained by a process using a buccal swab that involves a light touch on the inside of the cheek. The sample was later sent to the FBI who maintains the Combined DNA Index System (CODIS) that all fifty states contribute samples to.

CODIS matched KING's DNA with an unsolved rape case that had occurred six years (2003) earlier.

KING argued that the Maryland statute allowing for the collection of his DNA during the arrest process violates the Fourth Amendment. The Maryland supreme court agreed with KING.

ISSUE:

Does the taking and analyzing of a cheek swab of an arrested person's DNA violate the Fourth Amendment?

Held. No. DNA identification of arrestees is a reasonable search that can be considered part of the booking process.

REASONING:

1. The use of DNA for identification is no different than matching an arrestee's face to a wanted poster, or matching tattoos to known gang symbols to reveal a criminal affiliation; or matching the arrestee's fingerprints to those recovered from a crime scene (emp added).
2. The DNA collected from arrestees is an irrefutable identification of the person from who it was taken. Finding occurrences of the arrestee's CODIS profile in outstanding cases is consistent with this common practice.
3. A buccal swab is a far more gentle process than a vein-puncture to draw blood. It involves a light touch on the inside of the cheek; and

although it can be deemed a search within the body of the arrestee, it requires no "surgical intrusions beneath the skin."

4. There can be little reason to question "the legitimate interest of the government in knowing for absolute certainty the identity of the person arrested, in knowing whether he is wanted elsewhere, and ensuring his identification in the event he flees prosecution."

NOTES:

This opinion spends a considerable amount of time describing the history of DNA from when it was first utilized in England to convict a rapist murderer in 1986 to the technical advances in the process of analyzation of the samples. The court points out that the FBI is working on technology that will allow the police to obtain a DNA test result within 90 minutes. The court also reviews the historical development of CODIS, and that congress passed a law requiring the FBI to maintain the data base. As indicated above, all 50 states as well as many Federal Agencies contribute samples to this data base.

A number of cases are cited by the court involving right to privacy and minimal intrusion that does not violate the Fourth Amendment during the collection of samples involving urine or breath. Some of those cases are: Veronia School District v. Acton, bulletin no. 191 (mandatory testing of student athletes does not violate Fourth Amendment); Samson v. CA, bulletin no. 310 (allows for suspicionless search of parolee); Wyoming v. Houghton, bulletin no. 232 (search of passenger's property in legally stooped vehicle is reasonable); Illinois v. Gates bulletin no. 73 (fair probability will be found at a particular place); Illinois v. McArthur, bulletin no. 245 (diminished expectation of privacy and minimal intrusion); Skinner v. Railway Labor Executives' Association, bulletin no. 129, (breath test not unreasonable); Maryland v. Buie, bulletin no. 139 (search based on reasonable belief); and New Jersey v. TLO, bulletin no. 90, (privacy expectations vis-à-vis the state may depend upon the individual's legal relationship with the state. These are just several of which the court used as precedent setting authority to arrive at the decision in this case.

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