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Justices Allow DNA Collection After an Arrest

By Adam Liptak

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WASHINGTON — The police may take DNA samples from people arrested in connection with serious crimes, the Supreme Court ruled on Monday in a 5-to-4 decision.

The federal government and 28 states authorize the practice, and law enforcement officials say it is a valuable tool for investigating unsolved crimes. But the court said the testing was justified by a different reason: to identify the suspect in custody.

"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," Justice Anthony M. Kennedy wrote for the majority, "taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment."

Justice Antonin Scalia summarized his dissent from the bench, a rare move signaling deep disagreement. He accused the majority of an unsuccessful sleight of hand, one that "taxes the credulity of the credulous." The point of DNA testing as it is actually practiced, he said, is to solve cold cases, not to identify the suspect in custody.

But the Fourth Amendment forbids searches without reasonable suspicion to gather evidence about an unrelated crime, he said, a point the majority did not dispute. "Make no mistake about it: because of today's decision, your DNA can be taken and entered into a national database if you are ever arrested, rightly or wrongly, and for whatever reason," Justice Scalia said from the bench.

The case featured an alignment of justices that scrambled the usual ideological alliances. Chief Justice John G. Roberts Jr. and Justices Clarence Thomas, Stephen G. Breyer and Samuel A. Alito Jr. joined the majority opinion, while Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined Justice Scalia's dissent.

Justice Scalia has been a strong voice for Fourth Amendment rights this term. In recent months, he joined his three liberal allies from Monday's decision, along with other justices, to form majorities that limited the use of drug-sniffing dogs outside homes and the drawing of blood in drunken-driving investigations.

Justice Breyer, who generally votes with the court's liberal wing, was on the other side from his usual allies in all three of the recent Fourth Amendment decisions.

Monday's ruling, Maryland v. King, No. 12-207, arose from the collection of DNA in 2009 from Alonzo Jay King Jr. after his arrest on assault charges in Wicomico County, Md. His DNA profile, obtained by swabbing his cheek, matched evidence from a 2003 rape case, and he was convicted of that crime.

The Maryland Court of Appeals ruled that a state law authorizing DNA collection from people who had been arrested but not yet convicted violated the Fourth Amendment's prohibition of unreasonable searches.

Justice Kennedy wrote in the majority opinion that the "quick and painless" swabbing procedure was a search under the Fourth Amendment, meaning it had to be justified as reasonable under the circumstances. It was, he said, given "the need for law enforcement officers in a safe and accurate way to process and identify the persons and possessions they must take into custody."

Such identification, he said, "is no different than matching an arrestee's face to a wanted poster of a previously unidentified suspect; or matching tattoos to known gang members to reveal a criminal affiliation; or matching the arrestee's fingerprints to those recovered from a crime scene."

The information retrieved through DNA testing as performed by law enforcement officials is limited, Justice Kennedy wrote, and whether "the testing at issue in this case reveals any private medical information at all is open to dispute."

In dissent, Justice Scalia wrote that identification was not the point of the testing. Mr. King's identity was established before the DNA testing, Justice Scalia said, as officials had his full name, race, sex, height, weight, date of birth and address.

Nor was there a serious dispute about the purpose of the Maryland law under review, he wrote. The law said one purpose of the testing was "as part of an official investigation into a crime."

Chief Justice Roberts, in staying the state court decision while the Supreme Court considered the case, acknowledged that the law "provides a valuable tool for investigating unsolved crimes and thereby helping to remove violent offenders from the general population."

The law authorized testing for purposes of identification, Justice Scalia wrote, but only for missing people and human remains. It said nothing about identifying arrestees. "Solving crimes is a noble objective," he concluded, "but it occupies a lower place in the American pantheon of noble objectives than the protection of our people from suspicionless law enforcement searches. The Fourth Amendment must prevail."

All 50 states require the collection of DNA from people convicted of felonies. After Mr. King was convicted of assault, there would have been no Fourth Amendment violation had his DNA been collected and tested, Justice Scalia wrote.

"So the ironic result of the court's error is this: The only arrestees to whom the outcome here will ever make a difference are those who have been acquitted of the crimes of arrest."

From the bench, Justice Scalia repeatedly invoked the generation that fought the Revolutionary War and framed the Constitution. "The proud men who wrote the charter of our liberties," he said, "would not have been so eager to open their mouths for royal inspection."

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