US Supreme Court allows police to take DNA samples of arrestees

Joseph Kishore
4 June 2013

The US Supreme Court ruling on Monday that police can collect DNA samples from arrestees is another major attack on constitutional rights and an expansion in the powers of the state.

The 5-4 decision has vast implications not just for facilitating the growth of the state database of genetic information—which currently includes more than 11 million individuals—but for the basic right to be free from unreasonable searches and seizures. The decision allows for the collection of DNA information of individuals who are not convicted of a crime, and are therefore presumed innocent, to be used as evidence in cases for which the state has no reasonable suspicion that they are guilty.

In overturning a previous ruling by the Maryland Court of Appeals, Justice Anthony Kennedy, who wrote the majority opinion, argued that swabbing for DNA samples is akin to fingerprinting and mugshots—a "legitimate police booking procedure" that can be used to identify the arrestee. In fact, the acquired evidence is not used primarily for identification, but for submission in government databases.

Kennedy was joined by most of the traditional right-wing of the court, including Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito, along with a traditional liberal, Justice Stephen Breyer. The dissent was written by conservative Justice Antonin Scalia, who was joined by Justices Ruth Bader Ginsberg, Sonia Sotomayor and Elena Kagan.

The case, *Maryland vs. King*, involved a Maryland man, Alonzo Jay King Jr., who was arrested in 2009 on assault charges. Before being convicted on assault, his DNA was obtained. This led to his conviction in an unrelated rape charge from 2003.

The Maryland appeals court overturned the rape conviction, ruling that the state law authorizing DNA collection from arrestees was a violation of the Fourth Amendment, which says that the "right of the people to be secure in their persons, house, papers and effects, against unreasonable searches and seizures, shall not be violated."

The Maryland court ruled that the "weighty and reasonable expectation of privacy against warrantless, suspicion-less searches" overruled any "purported interests in assuring proper identification," and that DNA provided a "vast genetic treasure map" for the state to utilize.

It speaks to the decay of liberalism that it was left to the arch-reactionary Scalia to make certain valid points, from a libertarian perspective, in opposition to the majority ruling. Reading his decision from the bench, Scalia noted that the majority was carrying out a "sleight of hand" by justifying the collection of DNA data as necessary for identification.

"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." He added that "the proud men who wrote the charter of our liberties would not have been so eager to open their mouths for royal inspection."

The same logic that is used to justify warrantless seizure of DNA evidence could be employed to argue for a vast array of intrusive information-gathering activities by the state—any one of which might also have the effect of obtaining information to solve past crimes.

In opposing the decision, Steven Shapiro, the legal director for the American Civil Liberties Union, noted that it "creates a gaping new exception to the Fourth Amendment," which "has long been understood to mean that the police cannot search for evidence of a

crime—and all nine justices agreed that DNA testing is a search—without individualized suspicion. Today's decision eliminates that crucial safeguard."

Moreover, while Maryland's law limits DNA collection to those arrested for "serious" crimes, laws in other states are much broader. Twenty-seven states as well as the federal government have laws or regulations that allow for this practice.

A friend of the court brief from the Electronic Privacy Information Center noted that the Combined DNA Indexing System (CODIS) has been vastly expanded over the past several years. While it "once included DNA profiles of only convicted sex offenders," it "now contains more than eleven million profiles."

The EPIC brief noted, moreover, that CODIS "is not strictly limited, as all law enforcement agencies in the country, at the federal, state and local levels, have access for purposes of DNA matching. As CODIS expands, individual privacy rights are implicated, and not just for the individuals whose DNA is collected; the ability to search for partial matches also implicates the privacy rights of family members whose DNA is a close enough match that the person is flagged in a CODIS DNA search."

Over the past decade, the state, under the banner of the "war on terror," has begun constructing vast databases of emails, text messages, Internet activity, financial information and criminal and medical records. There is no doubt that DNA data will be incorporated into this systematic spying operation directed at the American people.

The Supreme Court decision is another in a long line of judicial attacks on fundamental democratic rights.