Maryland court rules volunteered DNA can be used in other cases

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A Maryland appellate court ruled last month that police were justified in taking a DNA sample from a voluntary donor and using it as evidence in a separate and unrelated case. The ruling established that once a DNA sample has been legally obtained, it can be indefinitely stored for use in unsolved crimes without violating the Fourth Amendment.

The Maryland ruling concerns the case of George Varriale, a homeless man who allowed police officers to collect a cheek swab during the course of a rape investigation in 2012. The sample Varriale volunteered cleared him of any suspicion regarding the rape, but then an administrator in a county DNA lab uploaded Varriale's genetic information into a collection database, where an automated search matched him to a 2008 burglary case. Varriale was then charged and convicted for the 2008 crime.

Varriale responded by appealing his conviction on the grounds that he had only consented to having his DNA examined for the purpose of the rape investigation, and that police overstepped this limitation by using his genetic material as evidence in an unrelated case. The Court of Appeals rejected this argument and upheld the earlier ruling in favor of the state.

Ironically, Maryland law grants fewer legal protections to individuals who voluntarily submit to DNA testing than it does to those whose DNA is collected during the course of an arrest. Maryland's 1994 DNA Collection Act requires that any genetic samples or records gathered during the course of a criminal investigation be eliminated whenever police action fails to result in a conviction.

Because the charges against Varriale were not directly related to the circumstances under which his DNA was collected, the sample is not subject to these established restrictions. This loophole in the state's legal statutes means that volunteered DNA can effectively be maintained and utilized at will.

The Varriale case is the third Maryland court case concerning DNA collection in criminal investigations and its relationship to Fourth Amendment prohibitions against unlawful search and seizure.

In 2013, the Supreme Court ruled five to four in *Maryland v. King* that police have the legal right to take DNA samples upon making an arrest, prior to conviction and in the absence of suspicion for any particular crime. In March of this year, the Court dismissed a 2014 case in which the state of Maryland ruled that police were justified in taking a DNA sample from an individual who had not formally been charged with any crime at all, and that sample collection did not require obtaining a warrant beforehand.

The decision in the *Maryland v. King* ruling hinged upon the idea that genetic sampling upon arrest was no different than any routine identification procedure, such as the collection of fingerprints. Speaking for the majority, Justice Anthony Kennedy argued that Maryland law was limited in its scope, since samples are destroyed if they do not result in conviction and because only specific non-coding, "junk" segments of DNA are examined.

The dissenting justices, who included Scalia, Ginsburg, Sotomayor, and Kagan, contended that sample collection upon arrest was in direct violation of Fourth Amendment provisions that criminal evidence can only be taken under conditions of probable cause—for a specific crime and when there is a reasonable belief that evidence of such a crime will be uncovered.

Because DNA was collected from King during a 2009 arrest for assault, run against a national database of genetic samples, and then used to convict him of an

unrelated rape in 2003, the intended purpose of the sampling was clearly prosecution rather than identification. In addition, DNA taken from arrested individuals cannot be tested prior to the establishment of an initial court arraignment, by which time the individual has certainly already been identified.

Different county and state jurisdictions have a wide variety of specific rules concerning the collection of genetic material. The *Maryland v. King* ruling solely focused on those used within Maryland, while failing to consider or replace less restrictive collection standards used in other parts of the country.

Immediately after the ruling was announced, the *World Socialist Web Site* wrote:

> By refusing to overrule a wide array of state standards that are less restrictive than those of Maryland, the court has intentionally left open the door to authoritarian collection methods. And since police are free to conduct their genetic seizure operations with little or no legal restraints, the scale of local DNA seizure efforts remains unknown.

The anti-democratic significance of the *Maryland v. King* ruling was further cemented by the high court's 2015 decision not to hear testimony in *Raynor v. Maryland*.

In 2009. Glenn Raynor was convicted of rape on the basis of genetic material obtained without his consent and without an arrest. Raynor was questioned by police officers in relation to the case and apparently offered to submit himself to DNA testing if the police agreed to destroy the sample at the end of the investigation. The officers interviewing him declined this offer, and then took a swab of sweat from the chair Raynor had been sitting in after he left the office.

DNA contained in the sweat sample served as the basis for convicting Raynor for the rape. A Maryland court upheld the actions of the police in a four to three decision. The majority opinion concluded that Raynor had "abandoned" his DNA at the police station, and again compared the sampling procedure to the taking of fingerprints.

The limits of this analogy are obvious, given that taking Raynor's fingerprints would at least have involved his awareness that identifying biometric data had been collected from him. In the dissenting opinion, Judge Sally D. Adkins sharply stated, "The majority's approval of such police procedure means, in essence, that a person desiring to keep her DNA profile private must conduct her public affairs in a hermetically sealed hazmat suit."

The rulings delivered in these three court cases within the span of roughly two years represent the state apparatus rapidly appropriating additional police powers for itself.

Alongside the vast spying operations of the NSA and the monitoring of electronic communications across the world, citizens' biometric data is being entered into a growing number of local and state "shadow" databases. The expansion of these databases, and the extent to which they go unregulated, has been documented in a volume of New York University's *Annual Survey of American Law* published last year.

This data will be used in order to suppress and prosecute citizens involved in acts of political protest and social unrest. An article featured in the *Atlantic* earlier this month reported that DNA swabs were taken from two protestors involved in the Black Lives Matter movement arrested during demonstrations in St. Louis marking the one-year anniversary since the death of Michael Brown and the military-police occupation of Ferguson, Missouri.

As class tensions mount and the distinction between protest and crime continues to blur in the eyes of the judicial system, the integration of electronic and biometric data will be used as a tool to identify and target members of the population in an overtly political fashion