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Vermont Supreme Court Rules Vermont's DNA Sampling Law Unconstitutional

This summer, the Vermont Supreme Court ruled in the case *State v. Medina, 2014 VT 69*, that Vermont's law requiring individuals charged with a felony to submit a DNA sample is unconstitutional under the Vermont Constitution. A year earlier, the United States Supreme Court came to a different conclusion in *Maryland v. King, 133 S. Ct. 1958 (2013)*. In the *King* case, the Court ruled that taking DNA samples from individuals charged but not convicted of a criminal offense is a legitimate police booking procedure, and is reasonable and constitutional under the U.S. Constitution's Fourth Amendment. The opposite rulings in these two cases is attributable to the difference in the Vermont and U.S. constitutions and the fact that states are free to adopt laws and craft their state constitutions in ways that afford their citizens greater protections than those available under the federal constitution. Since the ruling in *State v. Medina* was based entirely on the Vermont Constitution and not the federal one, the decision in that case faces no risk of reversal. Article 11 of the Vermont Constitution is the equivalent to Fourth Amendment of the U.S. Constitution in that it protects against unlawful search and seizures. Article 11 of the Vermont Constitution provides in part that "The people have a right to hold themselves, their houses, papers, and possessions, free from search and seizure." *Vt. Const. ch. I art. 11*. Article 11, however, has consistently been held by the Vermont Supreme Court to be more protective than its Fourth Amendment counterpart.

The Vermont Legislature created the DNA data bank and database in 1998 in order to collect and later analyze DNA from persons convicted of any crime defined as "violent" under state law. In 2005, the state legislature expanded DNA collection to include anyone convicted of any felony or attempted felony. Prior Vermont Supreme Court rulings have upheld the use of the DNA database and data bank, as well as the expansion of its application to those convicted of felonies and attempted felonies. In 2009, however, the legislature further expanded DNA sample collection to persons charged with but not yet convicted of a felony. It was this last change to the law that brought upon the *State v. Medina* case in which seven criminal defendants challenged the law as unconstitutional.

All of the defendants in *State v. Medina* had been arraigned on qualifying charges and subsequently refused to give DNA samples. The State moved to compel them to do so at statutorily mandated hearings in superior courts, where each defendant claimed that the statute violated the Vermont Constitution. Each separate case was consolidated into one, which became the *State v. Medina* case before the Vermont Supreme Court. In analyzing this case, the Court turned to its opinion in the 2008 case of *State v. Martin, 2008 VT 53,* which upheld a post-conviction DNA database on the theory that "using DNA to determine who committed a past crime is fulfilling an ordinary law enforcement purpose," but using it to link the same person to future crimes is a kind of "special need" for which a warrant is not necessary so long as the State's interests outweigh those of the convicted offender. This test created by the Court has

come to be known as the "special-needs test," and it requires that the law fulfill a special need, beyond the normal needs of law enforcement, and that the balance between public and private interests at stake weighs in favor of allowing the search or seizure.

When the Court applied the special needs test to the facts in *State v. Medina*, it found that the State failed every point of the analysis. The Court stated that "each defendant's privacy interest is greater [than it would be after conviction] because he or she has not been convicted," and still has a presumption of innocence. The justices questioned the notion that pre-conviction DNA sampling was a "valid and timely governmental interest" to better ensure the accurate identity of the person arrested. The Court reasoned that identification is "tangentially accomplished by post-arraignment DNA collection and analysis," and that the State had articulated no special need for DNA sampling beyond that for post-conviction. Further, the Court found that, under Article 11, while it "is possible that the fruits of a DNA search will produce information bearing on conditions of release or confinement with respect to a particular defendant, that possibility alone is insufficient to justify a warrantless DNA search of every defendant, with no distinction among those who will be searched." The Court continued that although pre-conviction fingerprinting at booking has never been held to run afoul of Article 11, DNA sampling was different in that DNA samples "provide a massive amount of unique, private information about a person that goes beyond identification of that person."

With the aforementioned points made, the Court ruled that the State's interest in the pre-conviction collection of DNA samples was outweighed by the privacy interests retained by arraignees prior to conviction, and was therefore in violation of Chapter I, Article 11, of the Vermont Constitution.

The decision is archived at http://info.libraries.vermont.gov/supct/current/op2012-087.html

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