

selection process by embracing the bright-line rule in the first step of the analysis, which makes it easier to establish the *prima facie* case of discrimination, while retaining the remainder of the *Batson* framework. In the concurring opinions, several justices make the important point that the modified bright-line-rule does not address the biases that are acted upon through peremptory strikes of any other class based on gender, religion, age, sexual orientation, or many other attributes that both prosecutors and defense attorneys may consider disadvantageous.

Festschrift

Constitutionality of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (DNA Act) under California’s Proposition 69

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The Supreme Court of California Held That the DNA Act Did Not Violate the Defendant’s Fourth Amendment Rights or His Search-and-Seizure Rights Under the California Constitution When It Required DNA Collection

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In *People v. Buza*, 413 P.3d 1132 (Cal. 2018), the California Supreme Court considered whether a law requiring the collection of DNA from every person arrested for a felony is lawful under the state’s constitution. Mr. Mark Buza was transported to county jail on arson-related felony charges, and he refused to provide a buccal swab for DNA analysis as required by California law. He was subsequently found guilty on a misdemeanor refusal charge by the Superior

Court of San Francisco as well as arson-related charges. On Mr. Buza’s appeal, the Court of Appeal reversed his misdemeanor conviction on the grounds that his Fourth Amendment rights were violated. The state petitioned for review which was granted. While the case was pending appeal, the U.S. Supreme Court addressed a similar issue in *Maryland v. King*, 569 U.S. 435 (2013). The Supreme Court of California remanded with directions. The California Court of Appeal again reversed his misdemeanor conviction due to a violation of California constitutional protections against unreasonable searches and seizures. The Supreme Court of California granted review, superseding the opinion of the Court of Appeal.

Facts of the Case

On January 21, 2009, Mr. Buza was arrested after a San Francisco police officer witnessed him running away from a police car with burning tires. He was subsequently searched and found to be in possession of matches, a road flare, a container of oil, and a container assumed to be gasoline. Mr. Buza was arrested on arson-related felony charges and transported to the county jail. The DNA Act was passed by California voters in 2004 and expanded DNA collection and identification requirements to include all individuals arrested for or convicted of felony offenses. During the booking process, Mr. Buza was informed that a DNA sample was required by California law and refusal to provide this sample would result in a misdemeanor charge. He refused to provide the required DNA sample.

Probable cause for Mr. Buza’s arrest was found the following day by judicial review. The district attorney subsequently charged him with felony arson-related charges and a misdemeanor refusal charge. Mr. Buza argued for acquittal of the misdemeanor charge on the claim that his Fourth Amendment rights were violated by the DNA Act. The court denied his motion and he was later convicted of all charges by a jury. The court ordered Mr. Buza to provide a DNA sample and, when he refused, the Sheriff’s Department was authorized to obtain it by reasonable force.

The Court of Appeal ruled the DNA Act violated Mr. Buza’s Fourth Amendment rights and reversed his misdemeanor refusal conviction. The Supreme Court of California granted review. While the case was pending, the U.S. Supreme Court reached a different decision in *Maryland v. King*. The Court held that “[w]hen 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, 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" (*King*, p 465–66). The case was remanded back to the Court of Appeal. On remand, the Court of Appeal ruled the DNA Act violated his search-and-seizure rights under the California Constitution and again reversed his misdemeanor conviction.

The Supreme Court of California granted review limited to whether the DNA Act's collection requirement violated Mr. Buza's state constitutional rights under article I, section 13 of the California Constitution or his federal constitutional rights under the Fourth Amendment of the United States Constitution.

Ruling and Reasoning

Associate Justice Leandra Kruger wrote the majority opinion. The court reviewed previous findings from *People v. Robinson* 224 P.3d 55 (2010) and *King*. In *Robinson*, the California higher court upheld the expanded DNA Act collection requirement to include individuals with felony convictions. In *King*, the Supreme Court held that DNA collection and identification from an arrestee was reasonable following a lawful arrest supported by probable cause.

Mr. Buza argued that the DNA Act differed from the Maryland collection law reviewed in *King* and that these differences changed its constitutionality under the Fourth Amendment. He argued that the California DNA collection requirement applies to a broader range of arrestees, collection and analysis of the DNA samples occur before the arrest is deemed valid by judicial determination and before accusatory pleading is filed, and DNA samples from exonerated arrestees are not automatically destroyed.

The court addressed each of Mr. Buza's arguments. First, the *King* decision was based on felony arrestees and not a specific classification of felony charges. Second, the court determined that any differences in the timing of collection between California and Maryland law would not change its constitutionality under the Fourth Amendment. Regarding the timing of DNA analysis, the court reported that a DNA profile was known to require 30 days to create, which is longer than the time to a probable cause hearing and arraignment. The court declined to comment on delaying DNA analysis until judicial

determination of probable cause. Third, the court ruled that the DNA Act expungement process did not pertain to Mr. Buza and therefore declined to address this. The court held that any differences between California and Maryland collection laws did not affect the Fourth Amendment analysis, and that Mr. Buza's misdemeanor refusal conviction did not violate his Fourth Amendment rights.

The California Supreme Court also addressed the question of whether the DNA Act violated the California Constitution. Mr. Buza argued that the balancing test was flawed in *King* because the legitimate government interests were misidentified, there is a quicker alternative to DNA collection and analysis, and the highly sensitive nature of DNA was overlooked. He reported the primary governmental interest of the DNA Act was not identification and safe, accurate processing of arrestees but investigatory purposes. He indicated fingerprints could be used for quicker and more "genuine" identification instead of DNA analysis. He reported that the privacy implications of providing his genetic information was ignored. Additionally, Mr. Buza argued that the California Constitution provided its residents greater privacy protection than the Fourth Amendment.

Although the court acknowledged that DNA samples could be used for investigatory purposes, the court cited that DNA collection was upheld in *Robinson* due to its ability to accurately identify and facilitate collection of information that could be used to process the arrestee. Second, the court indicated that fingerprints were historically deemed constitutional when they were not immediately available and that fingerprints cannot be considered a substitution for DNA identification. Third, the court rejected Mr. Buza's claim that *King* ignored the highly sensitive nature of DNA. DNA profiles are created by the non-coding sections of DNA, which provides no additional information than identification. State law forbids using DNA samples for other purposes. The court indicated additional constitutional analysis may be required in the future with technological advancements. Finally, the court recognized that state constitutional law is independent from federal constitutional law. The court ruled that arrestees in custody, whether in the state or federal system, had a reduced privacy interest. The court determined that parallel decisions made by the United States Supreme Court shall be respectfully considered, and the court sought to determine if adequate evidence was

present to reject the Supreme Court's guidance in *King*. The California court ruled that the defendant was lawfully arrested and a request for a DNA sample at booking was not unreasonable and, therefore, did not violate the California Constitution.

Dissent

Associate Justice Goodwin Liu wrote the first dissent and cited several disagreements. The dissent argued that a defendant cannot be convicted of refusing to provide a DNA sample in the absence of a valid arrest by judicial determination. Additionally, the dissent disagreed with the majority's assumption that the U.S. Supreme Court's decision in *King* was correct. The dissent ruled that Mr. Buza's misdemeanor refusal conviction was invalid under the California Constitution.

Associate Justice Mariano-Florentino Cuéller wrote the second dissent and was joined by Justice Dennis Perluss. The second dissent echoed the arguments within the first dissent and cited additional disagreements with the majority decision. The dissent rejected the idea that arrestees have a diminished expectation of privacy and argued that, under California law, arrestees are provided greater protection against searches than under federal law. The dissent argued that governmental interests did not outweigh the arrestee's right to bodily autonomy and privacy of DNA information. The dissent ruled that the state did not prove reasonableness of its searches to outweigh the intrusion on an individual's reasonable expectation of privacy.

Discussion

The *Buza* case highlights the balancing between governmental interests and individual privacy expectations. The Supreme Court of California relied heavily upon *Robinson* and *King* to support the constitutionality of California's DNA Act, as it applied to Mr. Buza, ruling that the Act did not violate his search-and-seizure protections under the California Constitution and the Fourth Amendment. Balancing of governmental interests of identification and assistance in processing arrestees with arrestees' expectations of privacy at the time of arrest and booking led this court to determine that DNA collection did not violate Mr. Buza's search-and-seizure rights under the California Constitution and Fourth Amendment. The court acknowledged that DNA technological advances may affect this balance in the future.

Forensic Expert Witness Testimony Admissibility

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Lack of Familiarity with Specific Test Protocol Does Not Render Inadmissible the General Testimony of an Otherwise Qualified Forensic Expert Witness

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In *State of South Dakota v. Jonathan Charles Wills*, 908 N.W.2d 757 (S.D. 2018), the South Dakota Supreme Court reversed and remanded a state circuit court conviction of Mr. Jonathan Wills for first-degree rape and sexual contact with a child under 16 because of the trial court's decision to exclude expert forensic psychiatric testimony. Using expert witness standards from South Dakota Codified Laws (SDCL) 19-19-702 (2016) and the U.S. Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the South Dakota Supreme Court concluded that the trial court had misapplied the state's expert witness standard. Wills argued that because the case was dependent on the weight given to expert witness testimony, the decision to exclude Wills' expert created unfair prejudice against him. Mr. Wills contended that precluding his expert from testifying about the methods used by the state's forensic interviewer was inappropriate and warranted a new trial.

Facts of the Case

Mr. Wills lived with his girlfriend, Ms. Lisa Trebelcock, and her three children in Beadle County, South Dakota. Shortly after Mr. Wills' relationship with Ms. Trebelcock ended, Ms. Trebelcock reported Mr. Wills to police for the alleged sexual abuse of one of her children. Mr. Wills alleged that Ms. Trebelcock "set up" the allegations of abuse to obtain custody of the children. Ms. Robyn Niewenhuis, a forensic social worker, conducted a structured