ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

State of Arizona v. Ian Mitcham
CR-23-0236-PR

PARTIES:

Petitioner: Ian L. Mitcham

Respondent/Cross-Petitioner: The State of Arizona

Amici Curiae in Support of Petitioner: Arizona Attorneys for Criminal Justice; American Civil Liberties Union and American Civil Liberties Union of Arizona

Amicus Curiae in Support of Respondent/Cross-Petitioner: Arizona Attorney General Kristin K. Mayes

FACTS:

In January 2015, police arrested Ian Mitcham ("defendant") for misdemeanor driving under the influence. Police read defendant the warning provided by the "Admin Per Se Implied Consent" form, which provided that, if defendant agreed to the draw, the blood would be used "to determine alcohol concentration or drug content." The warning authorized no other blood testing, and defendant was not informed that the police might conduct more tests.

Based on the warning, defendant consented to a blood draw. The police drew two blood vials. One vial allowed the police to test for alcohol or drug concentration, and the second allowed defendant to test his blood independently. Defendant and the police officer signed a "Destruction Notice," which stated that if defendant did not pursue his opportunity to test within 90 days, his blood sample "will have been destroyed and unavailable for reanalysis." The police tested their sample and determined defendant was over the legal limit. (He was later convicted of a misdemeanor DUI for this 2015 offense.)

In February 2015, a month after defendant's DUI arrest, police found a victim, A.F., dead in her home, lying in a pool of blood. Police collected biological swabs from the scene and developed an unknown male DNA profile which they entered into the federal Combined DNA Index System ("CODIS"). CODIS returned no matches and the case went cold.

Meanwhile, in 2016, defendant was charged with a felony narcotics possession offense. In 2017, he was charged with an aggravated DUI. (Defendant would later plead guilty to both crimes.)

In 2018, law enforcement performed a familial DNA test on the unknown male profile from the

2015 murder scene. The test identified an Arizona prison inmate, Mark Mitcham, as a close relative of the unknown profile. The police discovered that the inmate had two brothers, one living close to the crime scene. As a result, the police began to surveil this brother, defendant.

Contrary to the "Destruction Notice" previously given to defendant, police had not destroyed defendant's blood sample from the consensual 2015 draw and therefore still possessed it in 2018. On April 5, 2018, without resorting to a search warrant, police developed a DNA profile from one of defendant's blood samples from the 2015 DUI consent draw and created defendant's DNA profile, which matched the unknown DNA at the 2015 murder scene. The police then sought a search warrant and requested authorization to search defendant's home and place a GPS tracker on his car. The search warrant affidavit noted that (1) the police had obtained DNA from the crime scene left by an unknown male source, (2) a familial DNA test of that profile revealed that the unknown DNA likely belonged to a father, son, or brother of inmate Mark Mitcham, and (3) defendant had been identified as Mark Mitcham's brother. The affidavit did not identify Mark Mitcham's other relatives or explain why defendant had specifically been selected for investigation. However, the addresses of the victim and defendant were in the affidavit, which revealed that defendant's blood sample was in police custody from his 2015 DUI arrest and that a DNA profile from the blood matched the unknown profile from the crime scene. The court approved the search warrant.

Defendant was arrested, and a buccal swab was taken as part of a routine booking procedure. See A.R.S. § 13-610(K), (O). On April 18, 2018, a grand jury charged defendant with first-degree murder, second-degree burglary, and sexual assault.

On July 7, 2022, defendant moved to suppress the DNA evidence from his 2015 DUI blood draw and the subsequent DNA buccal sample from his arrest. He argued that the "extraction and creation of a DNA profile from a consensual blood draw ... was an unreasonable search under the Fourth Amendment" because it "went far beyond the scope of what was permitted by his prior consent in the unrelated DUI traffic stop." He added that the DNA profile from his arrest buccal swab was the fruit of the original illegal search.

On December 19, 2022, the Superior Court granted the defense motion to suppress, stating that "[i]t is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is per se unreasonable….[but] [i]t is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The Superior Cort concluded that, because defendant consented to the taking and analysis of his blood for drug or alcohol testing, the subsequent DNA analysis of his blood exceeded the scope of his consent. Because the touchstone of the Fourth Amendment is reasonableness, the Superior Court found that defendant had an objectively reasonable expectation of privacy in his blood and the State did not have a compelling interest to search his blood through a DNA analysis without first obtaining a warrant. Accordingly, absent some exception to the exclusionary rule, the Superior Court held that the evidence at issue must be suppressed. After finding both the inevitable discovery and good faith exceptions inapplicable, the Superior Court granted defendant's motion and suppressed the extraction of the DNA profile.

The State appealed the suppression order, raising four issues: (1) Defendant did not have a reasonable expectation of privacy in the 2015 DUI sample that he voluntarily provided to police. (2) Assuming a Fourth Amendment violation, the Exclusionary Rule should not apply since the DNA profile was admissible under the independent source, inevitable discovery, and attenuation doctrines. (3) The Exclusionary Rule did not apply because law enforcement developed the DNA profile in good faith reliance on a 2013 decision of the U.S. Supreme Court, *Maryland v. King*, 569 U.S. 435 (2013). (4) A reviewing court should decline to extend the Exclusionary Rule to DNA profiles developed from lawfully obtained evidence already in police custody.

The Superior Court stayed trial court proceedings pending the appeal.

The Arizona Court of Appeals reversed the suppression order entered in favor of defendant. The Majority concluded that, because the police would have acquired defendant's DNA profile even without the search of the 2015 blood draw, the Superior Court erred by suppressing defendant's DNA profile. Judge Catlett concurred in the reversal of the suppression order. However, he would not have reached the inevitable discovery issue since he disagreed that defendant had a reasonable expectation of privacy in the noncoding regions of DNA that the State lawfully possessed in 2018. Thus, he opined, there was no search and therefore no Fourth Amendment violation.

Defendant filed a Petition for Review and the State filed a Cross-Petition for Review. The Arizona Supreme Court granted defendant's Petition for Review and requested the parties to address the rephrased issue set forth below. The Court also granted the State's Cross-Petition.

ISSUE (PETITION FOR REVIEW): "Did the Court of Appeals err in reversing the trial court's suppression order?"

ISSUE (CROSS-PETITION FOR REVIEW): "Does sequencing a DNA profile from evidence lawfully held by police amount to a search under the Fourth Amendment?"