

A defendant was arrested and charged with burglary. Under state law, police are required to obtain DNA samples from all persons arrested for felonies and to store those samples in a state registry.

The police informed the defendant of the state law and said that they would be using a cheek swab to obtain a DNA sample from him. The defendant did not object.

The defendant was later acquitted of burglary. A year later, however, authorities matched the defendant's DNA to an unsolved sexual assault crime. The defendant, now charged with sexual assault, has moved to suppress the DNA sample as having been obtained in violation of the Fourth Amendment.

Should the court suppress the DNA sample?

- A. No, because the defendant failed to lodge a timely objection to the sample collection. (3%)
- B. No, because the statute requiring collection of DNA samples from felony arrestees does not violate the Fourth Amendment. (84%)
- C. No, because the statute violates the Fourth Amendment, but the police acted in good-faith reliance upon it. (5%)
- D. Yes, because the statute requiring collection of DNA samples from felony arrestees violates the Fourth Amendment. (5%)

Incorrect

Correct answer B

84% Answered correctly

59 secs Time Spent

2023 Version

## **Explanation:**

### **Exceptions to warrant requirement**

Search incident to arrest

Administrative search

Stop and frisk

Plain view

Automobile exception

Consent

Exigent circumstance

Special government purpose

Mnemonic: **SAD SPACES**

A court should suppress evidence obtained in violation of a criminal defendant's **Fourth Amendment** right to be free from **unreasonable searches and seizures**. A Fourth Amendment search occurs when police:

**physically intrude** upon a **constitutionally protected area**—ie, **a person's body**, house, papers, or effects—to obtain information *or*

invade a person's reasonable expectation of privacy.

A search is unreasonable and unconstitutional if it is conducted without a warrant and no **exception to the warrant requirement** applies. One exception exists when there is a **special government purpose**. Police have a special purpose to conduct searches during routine booking procedures after an arrest. Such routine procedures can include swabbing the cheeks of individuals arrested for a serious crime (eg, a felony) to identify their DNA.\* Police may then store the DNA samples in a database and compare them to samples from unsolved crimes.

Here, the state law required police to obtain DNA samples from all persons arrested for felonies and to store those samples in a state registry. Pursuant to this statute, the police swabbed the defendant's cheek after he was arrested for burglary (a felony), and they later used the sample to match his DNA to an unsolved crime. Statutes requiring collection of DNA samples from felony arrestees do not violate the Fourth Amendment (**Choice D**). Therefore, the court should not suppress the defendant's DNA sample.

\*The Supreme Court has upheld statutes requiring cheek swabs to obtain DNA because the government has a substantial interest in identifying criminals and a cheek swab is a minimal intrusion upon a person's body. However, the Supreme Court has left open whether more invasive procedures would require a warrant.

**(Choice A)** A defendant can move to suppress evidence (eg, DNA sample) even if he/she did not object when the evidence was collected (eg, when cheek was swabbed).

**(Choice C)** The statute does not violate the Fourth Amendment. Had it done so, the [good-faith exception](#) would have allowed the court to admit the evidence if the police acted in good-faith reliance upon the statute.

**Educational objective:**

Police do not need a warrant to conduct a search if a special government purpose exists. Police have a special purpose to conduct searches during routine booking procedures after an arrest. Such routine procedures can include swabbing the cheeks of individuals arrested for a serious crime to identify their DNA.

**References**

U.S. Const. amend. IV (prohibiting unreasonable searches and seizures).

Maryland v. King, 569 U.S. 435, 465–66 (2013) (holding that a statute requiring police to swab the cheek of a person who has been arrested for a serious crime is a lawful warrantless search of that person's body).

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