State of Iowa v. Jerry Lynn Burns
S. Ct. No. 20-1150

Oral Arguments in this case took place on September 30, 2022, in a special session of the Court at the University of Iowa College of Law. The Iowa Supreme Court schedules a handful of arguments on the road throughout the state each year to expose students and the general public to the appellate process and demonstrate the work of Iowa's highest court. In this case, the Court was not in complete agreement. There is a majority decision (joined by 5 of Iowa's 7 Supreme Court Justices) that represents the final decision of the Court. There is also a concurring opinion which means that a justice agreed with the final outcome but for a different reason. And, in this case, there are dissenting opinions which means that one or more of the justices disagreed with the majority opinion and would have ruled differently. Below are excerpts from the opinions:

Opinion of the Court – March 31, 2023

Majority Opinion (Justice May) (affirming the lower court decision):

The (district) court believed that a person does not maintain a reasonable expectation of privacy in property that has been abandoned…When he exited the restaurant without the straw, Burns relinquished any expectation of privacy in the drinking straw, the saliva left on it and the DNA contained within the saliva…We conclude that the district court was right to deny (defendant's motion to suppress the evidence).

A reasonable expectation of privacy exists if two criteria are met. First the defendant must have sought to preserve something as private. Second, the defendant's expectation of privacy must be one that society is prepared to recognize as reasonable. Unless both criteria are met, there is no reasonable expectation of privacy, and the Fourth Amendment does not apply. These criteria are not met here. Burns made no effort to preserve the straw as private…And even if Burns somehow expected privacy, his expectation was not the kind that society is prepared to recognize as reasonable.

To his credit, Burns seems to concede that he abandoned any Fourth Amendment privacy interest in the *straw*. In Burns's view, though, we should treat the DNA *on the straw* different from the straw itself. Even if we accept this distinction, though, the two-part reasonableness test still leads to the same result. The DNA was on the straw. So, when Burns failed to preserve the straw as private, he also failed to preserve the straw-bound DNA as private either. Burns points out that, *unlike* the straw, *his* DNA was not visible to staff or patrons at the restaurant. Plus, his DNA *profile* – the information that permits identification of the donor – couldn't be obtained without lab analysis involving specialized equipment and technical expertise. So, Burns argues that even after he abandoned the straw, he could still expect his DNA profile to remain private. We disagree.

In Burns's view, DNA isn't *voluntarily* abandoned because humans are constantly and *involuntarily* shedding DNA through hair loss, skin flakes, sneezes, and so on. For purposes of this case, though, we don't need to consider every possible form of DNA loss or DNA collection… we only have to consider whether the Fourth Amendment protects that DNA that Burns left on one clearly identifiable item: the drinking straw that Burns voluntarily placed in his own mouth, and then voluntarily left on the Pizza Ranch table even though Burns could have instead chosen the keep the straw (and its DNA) private by taking them t his car or home. We think it does not. Even if we lump Burns's situation in with less voluntary forms of DNA loss, the same outcome might still hold. Although it is true that humans distribute DNA continually and unconsciously, the same is true of latent fingerprints (not to mention footwear impressions, tire tracks, and other impression evidence).

While we appreciate that *some* forms of DNA analysis may provide remarkable windows into deeply personal information, we remain focused on the facts of the case before us. And the case before us is about *one* particular instance of DNA analysis. *That* analysis did not reveal the kinds of personal information - like genetic defects or predispositions to disease – that free citizens might expect to keep private. Rather according to the lab report, the straw analysis only revealed that the weak DNA profile developed from the ends of the straw indicated a male source, and – most importantly – the DNA donor could NOT be eliminated as the major contributor to the DNA profile previously developed from a stain on Martinko's dress.

We conclude that the Fourth Amendment did not require police to obtain a warrant before collecting the straw or before analyzing DNA on the straw or before analyzing DNA on the straw to determine whether it matched DNA found on Martinko's dress.

Dissenting Opinion (Justice Oxley):

Extraction of information from DNA is a distinct act from collecting the straw on which the DNA is left and must be analyzed separately… The abandonment doctrine does not apply to DNA involuntarily and unavoidably shed in everyday life…The majority's attempt to minimize the consequences of its reasoning is internally inconsistent. If abandonment of the straw means abandonment of the DNA – and the information contained in the DNA – then it matters not what the police do with any information extracted from that DNA.

Comparing the limited identification information actually collected to the wealth of information available, but not taken, from Burns's DNA is not the right comparison. We are determining whether the officers' actions – processing the DNA to collect unique identification information to use in a criminal investigation – violated an *expectation of privacy* society is prepared to recognize as reasonable. If we were assessing only whether police conduct was reasonable here, it is certainly important that officers only requested a report on whether Burns's DNA matched the blood sample from the crime scene – they dd not request, or even receive, anything else. But in assessing whether individuals have a reasonable expectation that their DNA will remain private and not be tested without their consent or without a warrant, we

should not blind ourselves to the vast scope of information police can gain access to when they peek behind the curtain of DNA. Allowing the police's conduct to limit the scope of allegedly protected privacy interests turns the Fourth Amendment analysis on its head.

Once you strip away the technological aspects of this action, not only does it begin to look like what we would traditionally classify as a search, but it in fact looks precisely the type of generalized, suspicionless search the Framers sought to guard against. If the Fourth Amendment has nothing to say in this matter, there is no reason police could not have done the same thing to everyone in the Pizza Ranch, or everyone who lived in Cedar Rapids in 1979, or everyone, period.

That is not to say that DNA is off-limits to police investigations. The warrant application affidavit ultimately used to properly obtain Burns's DNA reveals the impressive techniques officers used to crack this cold case. Through genealogy databases and cooperating individuals identified through that process, officers narrowed the suspects down to Burns and his two brothers. The problem arose when officers searched Burns's DNA without a warrant.

Dissenting Opinion (Justice McDermott):

The majority's holding hinges on the idea that the drinking straw and the DNA specimen on it were "abandoned property," and since people have no reasonable expectation of privacy in abandoned property, the Fourth Amendment is not even implicated here. But to call microscopic strands of DNA in human cells that we involuntarily leave wherever we go "abandoned" doesn't fit either a common or legal conception…Because the warrantless search of DNA specimen in this case violated Jerry Burns's Fourth Amendment protections against unreasonable searches and seizures, I respectfully dissent.

We must distinguish between the drinking straw and the DNA specimen on the straw. A straw, of course, is a hollow tube (typically plastic) commonly provided to diners to facilitate drinking. A DNA specimen, conversely, is a molecule found within the nucleus of a cell that carries the genetic instructions for a particular person's entire biological development and function… The pertinent questions in this case surround whether the DNA specimen, not the straw, was protected from a warrantless search.

In this case, the State didn't get a warrant before it seized the straw and extracted and analyzed the DNA specimen on it. The State makes no claim that any exception to the warrant requirement applies. Instead, the State argues – and the majority holds – that people have no constitutional search-and-seizure protections in property they abandon and, thus, that the Fourth Amendment has no application in this case because Burns abandoned the straw and the DNA specimen on it. The majority finds, in other words, that by abandoning the straw Burns cannot establish that the straw or the DNA specimen on it was *his* person, house, paper, or effect.

The majority's conclusion relies on a false premise. Even if we accept that Burns abandoned the straw, this does not mean that he also abandoned his DNA specimen on the straw. And as a result, the State could not extract and search the DNA specimen without a warrant… There are two reasons for this. First, the extraction and analysis of Burns's DNA is a search separate and apart from the seizure oof the straw, with distinct Fourth Amendment considerations that go with it. There's a fundamental difference between seizing an object and extracting private information contained on or within that object. Fourth Amendment interests are invaded by depriving a person of the right to exclude others from information. People have the right, in other words, to be secure in their persons and papers, as opposed to simply the right not to be deprived of their person or papers… Second, the doctrine of abandonment doesn't apply to DNA that a person involuntarily and unavoidably sheds in the course of daily life. The abandonment property doctrine hinges on whether a person "voluntarily" abandons the thing in question.

The majority determines that using DNA only for identification purposes, as the police did in this case, doesn't foreclose the possibility that other kinds of warrantless DNA analysis might require a different result.

The majority can't square an identity-only limitation on DNA analysis with its own earlier holding that the constitution doesn't protect abandoned DNA at all… The majority's holding is premised on the notion that Burns had no reasonable expectation of privacy in his DNA specimen on the straw. And without a reasonable expectation of privacy, there is no "search" for Fourth Amendment purposes… The conditional proposition the majority lays down – if DNA is abandoned, then police may do with it as they wish without Fourth Amendment imposition – offers no room for a different result in a future case involving abandoned DNA.

DNA arms those with the ability to analyze it with a vast trove of private details about a person…People do not forfeit to the government a reasonable expectation of privacy in the contents of their entire genetic code – and all that it reveals about them – merely by leaving a drinking straw at a restaurant.

The mere capacity to enable easier or faster crime detection does not – and cannot – determine whether an action violates constitutional safeguards…Warrantless entry by kicking in the doors of houses might well result in solving more crimes, but that doesn't mean the Fourth Amendment sanctions it…DNA evidence remains available to use in criminal investigations with a warrant supported by probable cause…We should not let DNA's efficacy override core constitutional protections.