

Evidence

[*Nevada v. Jackson*](#), 569 U.S. ___ (June 3, 2013). The Court reversed the Ninth Circuit, which had held that the defendant, who was convicted of rape and other crimes, was entitled to federal habeas relief because the Nevada Supreme Court unreasonably applied clearly established Supreme Court precedent regarding a criminal defendant's constitutional right to present a defense. At his trial, the defendant unsuccessfully tried to introduce extrinsic evidence that the victim previously reported that the defendant had assaulted her but that the police had been unable to substantiate those allegations. The state supreme court held that this evidence was properly excluded. The Ninth Circuit granted habeas relief. The Court reversed, noting in part that it "has never held that the Confrontation Clause entitles a criminal defendant to introduce *extrinsic evidence* for impeachment purposes" (emphasis in original).

Arrest Search and Investigation

DNA Cheek Swab

[*Maryland v. King*](#), 569 U.S. ___ (June 3, 2013). The defendant's Fourth Amendment rights were not violated by the taking of a DNA cheek swab as part of booking procedures. When the defendant was arrested in April 2009 for menacing a group of people with a shotgun and charged in state court with assault, he was processed for detention in custody at a central booking facility. Booking personnel used a cheek swab to take the DNA sample from him pursuant to the Maryland DNA Collection Act (Maryland Act). His DNA record was uploaded into the Maryland DNA database and his profile matched a DNA sample from a 2003 unsolved rape case. He was subsequently charged and convicted in the rape case. He challenged the conviction arguing that the Maryland Act violated the Fourth Amendment. The Maryland appellate court agreed. The Supreme Court reversed. The Court began by noting that using a buccal swab on the inner tissues of a person's cheek to obtain a DNA sample was a search. The Court noted that a determination of the reasonableness of the search requires a weighing of "the promotion of legitimate governmental interests" against "the degree to which [the search] intrudes upon an individual's privacy." It found that "[i]n the balance of reasonableness . . . , the Court must give great weight both to the significant government interest at stake in the identification of arrestees and to the unmatched potential of DNA identification to serve that interest." The Court noted in particular the superiority of DNA identification over fingerprint and photographic identification. Addressing privacy issues, the Court found that "the intrusion of a cheek swab to obtain a DNA sample is a minimal one." It noted that a gentle rub along the inside of the cheek does not break the skin and involves virtually no risk, trauma, or pain. And, distinguishing special needs searches, the Court noted: "Once an individual has been arrested on probable cause for a dangerous offense that may require detention before trial . . . his or her expectations of privacy and freedom from police scrutiny are reduced. DNA identification like that at issue here thus does not require consideration of any unique needs that would be required to justify searching the average citizen." The Court further determined that the processing of the defendant's DNA was not unconstitutional. The information obtained does not reveal genetic traits or private medical information; testing is solely for the purpose of identification. Additionally, the Maryland Act protects against further invasions of privacy, by for example limiting use to identification. It concluded:

In light of the context of a valid arrest supported by probable cause respondent's expectations of privacy were not offended by the minor intrusion of a brief swab of his cheeks. By contrast, that same context of arrest gives rise to significant state interests in identifying respondent not only so that the proper name can be attached to his charges but also so that the criminal justice system can make informed decisions concerning pretrial custody. Upon these considerations the Court concludes that DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. When 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.