

## **TAKING A BUCCAL SWAB FROM A JUVENILE PRE-ADJUDICATION DOES NOT VIOLATE THE 4TH AMENDMENT, BUT SUBMITTING THE SAMPLE FOR DNA TESTING DOES, WITHOUT PROBABLE CAUSE**

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*Mario W. v. Arizona*

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Authored by the [JSH Appellate Team](#)

A statute requires law enforcement to obtain a buccal sample from juveniles who are arrested for certain offenses. A DNA profile is then extracted from the sample. The information is entered into state and national databases. A juvenile not found delinquent may have the profile and sample expunged. Seven juveniles were charged with qualifying offenses and were ordered to submit a buccal sample for DNA testing. The trial court rejected Fourth Amendment objections. A divided court of appeals panel affirmed as to five juveniles for whom there was a probable cause finding, and reversed as to the remaining two juveniles for whom no probable cause determination had yet been made. The state and two juveniles petitioned for review.

The Supreme Court affirmed in part and reversed in part. The statute involves two separate intrusions on a juvenile's privacy: (1) the physical seizure of a buccal sample, and (2) extraction of the DNA profile. The two searches implicate different privacy interests. The seizure of buccal cells is a physical intrusion, but does not reveal intimate personal information about the individual. The later search of the sample reveals uniquely identifying information about individual genetics. Thus, a two-tiered approach is appropriate. The initial swab, which is a search or seizure under the Fourth Amendment, is justified by the possibility that "a juvenile is released pending adjudication and later fails to appear for trial without previously having submitted a buccal sample." This possibility creates an "exigency" because "the opportunity to obtain a DNA profile for identification purposes will have been lost." Thus, the swab is constitutional as to all seven juveniles because they were all arrested for a qualifying offense.

The second search presents a greater privacy concern because it involves the extraction (and subsequent publication to law enforcement nationwide) of thirteen genetic markers from the arrestee's DNA sample that create a DNA profile effectively unique to that individual. The court held that the state is unable to show a "governmental interest in obtaining the DNA profiles before trial [that] is sufficient to justify the second search." Thus, the DNA testing is unconstitutional as to all seven juveniles because none has been adjudicated delinquent. If an arrested juvenile on release fails to appear, "because the State already will have obtained a buccal sample . . . it may obtain a DNA profile from the sample once a juvenile fails to appear as required by law or court order."