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NO. 66462-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

J.O.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY, JUVENILE
DEPARTMENT

The Honorable Alfred Heydrich, Judge

BRIEF OF APPELLANT

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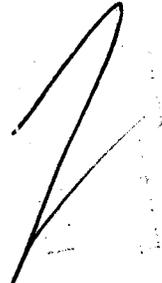


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A. ASSIGNMENTS OF ERROR

1. The court lacked jurisdiction to order appellant to provide a biological sample for deoxyribonucleic acid (DNA) databanks. CP 5.

2. Appellant's state and federal constitutional rights to be free from unreasonable searches and seizures were violated when he was ordered to submit to involuntary biological sampling for DNA testing.

Issues Pertaining to Assignments of Error

1. The juvenile court loses jurisdiction to enforce conditions of a deferred disposition unless a motion to revoke was brought before the end of the deferral period. Due process also requires the juvenile be given notice of the basis for the revocation motion. Before the term expired, the State moved to revoke appellant's deferred disposition based on his expulsion from school and his failure to pay restitution. At the hearing, which occurred after the end of the deferral period, the issue of the DNA sample was raised. Did the court err in concluding it had jurisdiction to order the DNA sample when appellant had no notice of this issue before the end of the deferral period?

2. Involuntary DNA sampling is a search, which must be reasonable under the Fourth Amendment and the greater right to privacy protected by Article 1, § 7 of the Washington Constitution. Suspicionless searches are not reasonable unless they are justified by “special needs,” which must be not primarily for normal law enforcement purposes and, under the Washington Constitution, must also be narrowly tailored to meet a compelling state interest. Did the involuntary, suspicionless DNA sampling violate appellant’s state and federal constitutional rights?

B. STATEMENT OF THE CASE

The Whatcom County prosecutor charged appellant J.O. with first-degree theft and third-degree malicious mischief. CP 19. J.O. agreed the court could consider the police reports to find him guilty of taking a motor vehicle without permission in order to accept the offer of a deferred disposition. CP 11. The court deferred disposition for six months on numerous conditions, including paragraph 4.12, which required J.O. to “have a biological sample collected for purposes of DNA identification and analysis.” CP 9. The order of deferred disposition also required J.O. to “fully cooperate in the testing,” but stated, “the appropriate agency shall be responsible for obtaining the sample prior to the respondent’s release from confinement.” CP 9. The deferral period was to end with a compliance hearing on October 27, 2010. CP 9.

On October 20, 2010, the State moved to revoke the deferred disposition citing two grounds: 1) J.O.'s expulsion from school and 2) his failure to pay restitution. CP 24-25. The hearing set for October 27 was continued to December 9 because J.O.'s counsel withdrew and his new attorney needed time to prepare. CP 23; CP 22.

The December 9 hearing opened with defense counsel stating resolution had been reached and the State had agreed to withdraw the motion to revoke. RP 2. All but roughly \$70 of the over \$2,000 in restitution had been paid, and the remainder would be paid by the end of the day. RP 2. The court appeared to agree that all that remained was to sign the order. RP 2. Defense counsel then requested J.O. be excused from providing the DNA sample because the deferred disposition was complete. RP 3. With no one prepared to argue or decide the issue, the court continued the proceeding. RP 4.

The following week, defense counsel asked the court to sign the motion to vacate, as it previously indicated it would. RP 6. The prosecutor objected on the grounds that the DNA sample had not been provided. RP 7. The court agreed and declined to sign the proposed order until it resolved the DNA issue. RP 9.

At the hearing on the DNA issue the following week, defense counsel argued the court no longer had jurisdiction to enforce the

conditions. RP 10-11. The court disagreed and found that because there was a pending motion to revoke on December 9, and the DNA issue was raised before that motion was resolved, it had jurisdiction. RP 14. The court ordered J.O. to provide the sample, but also ordered the probation office to hold the sample (rather than forwarding it to the Washington State Patrol) pending outcome of this appeal. RP 21. J.O.'s conviction has now been vacated and the charges dismissed with prejudice. CP 2. J.O. appeals the order compelling him to provide the DNA sample. CP 3.

C. ARGUMENT

1. THE COURT LACKED JURISDICTION TO COMPEL DNA COLLECTION WHEN THE STATE FAILED TO RAISE THE ISSUE BEFORE THE END OF THE DEFERRAL PERIOD.

The court lacked jurisdiction to enforce the DNA sample condition of J.O.'s deferred disposition because the State did not bring a written motion to revoke giving him notice of the violation before the end of the deferral period. "A juvenile court loses jurisdiction to enforce violations of custody conditions when the period of community custody terminates, unless a violation proceeding was instituted before termination." State v. Tucker, ___ Wn.2d ___, 246 P.3d 1275, 1276 (2011); see also State v. Y.I., 94 Wn. App. 919, 921, 973 P.2d 503 (1999) (order requiring juvenile to pay victim penalty assessments reversed for lack of jurisdiction because petition to

review conditions was filed after supervision period had terminated). Whether a court has jurisdiction is a question of law reviewed de novo. Y.I., 94 Wn. App. at 922. The court concluded it had jurisdiction to enforce the DNA sample condition because there was a pending motion to revoke on other grounds still before the court. RP 14. This conclusion was in error.

The court's jurisdiction to decide a motion to revoke based on a violation of the conditions depends "upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor." Tucker, ___ Wn.2d at ___, 246 P.3d. at 1276 (quoting RCW 13.40.127(7)). That motion must state "with particularity" both the requested relief and the grounds therefore. Id. (citing CR 7(b)). Without a proper motion, filed before the end of the deferral period, the juvenile court loses jurisdiction to adjudicate violations of the conditions of a deferred disposition. Id. Therefore, because the State did not file a written motion alleging the failure to provide a DNA sample before the end of the deferral period, the court no longer had jurisdiction over that violation. Id.

The State's written motion on other grounds does not preserve the court's jurisdiction on other potential violations. So to hold would render meaningless the requirement that the motion state the grounds with particularity. See, e.g., State v. Cromwell, 157 Wn. 2d. 529, 535, 140 P.3d 593 (2006) (citing State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003))

(“We cannot construe a statute so that it is meaningless.”). Additionally, the particularity requirement satisfies the due process concerns that would arise if the juvenile were not, as J.O. was not, given notice of the basis for the motion. See State v. Todd, 103 Wn. App. 783, 790, 14 P.3d 850 (2000) (court did not lose jurisdiction because “the State instituted proceedings before the expiration of the deferral period . . . by filing a motion that gave Todd sufficient notice to satisfy due process as to the basis for the State’s motion.”).

The purpose behind the careful limiting of juvenile court jurisdiction is to protect the juvenile from “administrative inertia” such as occurred in this case. State v. May, 80 Wn. App. 711, 717, 911 P.2d 399 (1996). As noted in the order on deferred disposition, the responsibility for obtaining the sample is on the appropriate agency, but the juvenile is required to fully cooperate. CP 9. It appears from counsel’s argument, that J.O. initially refused the request for a DNA sample shortly after the deferred disposition was granted. RP 12. On this basis, the State could have moved to revoke at that point. Instead, for six entire months, the State did nothing. In fact, no further mention was made of the DNA sample until defense counsel brought it up, roughly six weeks after the end of the deferral period at a hearing on another matter. RP 2-3.

In creating the bright line rule ending juvenile court jurisdiction, the May court relied in part on the rule of lenity and the Y.I. court noted its concern that a juvenile should not be “under constant threat of incarceration until his or her 18th birthday.” Y.I., 94 Wn. App. at 924; May, 80 Wn. App. at 717. If the Legislature had intended to specifically extend juvenile court jurisdiction to require DNA testing, it could have done so as it did regarding restitution and other legal financial obligations. See RCW 13.40.190 (for purposes of restitution section, “respondent shall remain under the court’s jurisdiction for a maximum term of ten years after the respondent’s eighteenth birthday”); RCW 13.40.192 (order to pay legal financial obligations “remains enforceable for a period of ten years). With the end of the deferred disposition period, J.O. was entitled to resolution of the issues currently before the court and to finality on those issues not raised before the end of the deferred period. Because the issue was not raised during that period, the court lacked jurisdiction to order the DNA sample.

2. THE COMPELLED DNA SAMPLE VIOLATED J.O.’S FOURTH AMENDMENT AND ARTICLE I, SECTION 7 RIGHTS.

In State v. Surge, the Washington Supreme Court held that compelled DNA sampling does not invade the “private affairs” of a convicted felon under article I, section 7 of Washington’s constitution. State v. Surge, 160 Wn.2d 65, 156 P.3d 208 (2007). It is also well-established that

DNA sampling of convicted felons is permitted under the “special needs” exception to the Fourth Amendment’s warrant requirement. State v. Olivas, 122 Wn.2d 73, 106, 856 P.2d 1076 (1993). But a juvenile such as J.O. who has successfully completed a deferred disposition is more akin to an ordinary citizen in terms of his expectation of privacy. His conviction is vacated, the charges dismissed with prejudice, and the records are sealed when he reaches age 18. RCW 13.40.127(10). Because his privacy interest in his identity is greater than that of a convicted adult felon, and is more akin to that of an ordinary citizen, the compelled DNA sampling violated J.O.’s privacy rights. Therefore, this court should reverse the order requiring J.O. to submit a DNA sample and should order destruction of the sample currently being held by Whatcom County Juvenile Probation.

a. The Compelled DNA Sampling Invaded J.O.’s Private Affairs under Article I, Section 7 of Washington’s Constitution.

Article I, section 7 reads, “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Under this provision the first question is whether the search intrudes upon “privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.” Surge, 160 Wn.2d at 71 (quoting State v. Young, 123 Wn.2d 173, 181, 867 P.2d 593 (1994)). The second question is whether authority of law, i.e., a valid warrant, justifies the

search. Surge, 160 Wn.2d at 71; Robinson v. City of Seattle, 102 Wn. App. 795, 812-13, 10 P.3d 452 (2000). It is by now well settled that the Washington Constitution provides broader protection of individual privacy than does the Fourth Amendment. Surge, 160 Wn.2d at 70. Whether undisputed facts constitute an invasion of citizens' "private affairs" and whether an exception to the warrant requirement applies are questions of law to be reviewed de novo. State v. Archie, 148 Wn. App. 198, 201, 199 P.3d 1005 (2009); State v. Schlieker, 115 Wn. App. 264, 269, 62 P.3d 520 (2003).

Here, the court ordered the DNA sample be taken under RCW 43.43.754, which authorizes collection of a sample from "Every adult or juvenile individual convicted of a felony, or any of the following crimes (or equivalent juvenile offenses): [listing qualifying non-felonies]." But the court did not consider that when a juvenile is granted a deferred disposition, he retains a far greater privacy interest in his identity than does a convicted felon, and compelled submission of a biological sample to a DNA database invades his private affairs. As applied to juveniles who successfully complete a deferred disposition, RCW 43.43.754 violates article I section 7 of the Washington Constitution.

- i. J.O.'s privacy interest in his identity is stronger than a convicted felon and more akin to that of an ordinary citizen.

The distinction drawn in Surge between the privacy interests of convicted felons and those of ordinary citizens shows that compelling juveniles to provide DNA under a deferred disposition violates article I, section 7. The court in Surge considered the reasonable expectation of privacy of the “narrow class of individuals who have been convicted of the listed crimes.” 160 Wn.2d at 72. The court noted its decision was based on “a convicted felon’s asserted privacy interest in his or her identity, not on the privacy interests of the ordinary citizen.” Id. Under Surge, convicted felons have diminished privacy interests because their criminal records are permanent and public. Id. at 75, 77. The court explained in Surge that convicted felons “retain almost no privacy interest in their identity” because “[u]pon conviction, they lose the privilege of keeping their identity from becoming part of a public record.” Id. at 75. The court noted that “a person convicted of a felony who has served out his or her sentence normally cannot expunge his or her other identifying information from existing government records.” Id. at 77.

By contrast, a juvenile who successfully completes a deferred disposition is entitled to behave as if the conviction never occurred. RCW 13.40.127(10)(b); RCW 13.50.050(14). His conviction is vacated and the

charges dismissed with prejudice. RCW 13.40.127. He can have the records sealed at age 18. RCW 13.40.127(10). This statutory framework indicates the Legislature's intent to be more lenient with juveniles by permitting both vacation of the conviction and later sealing of the records so that the juvenile's identity and the proceeding are not open to the public.

Also, courts generally attempt in other ways to protect the confidentiality of juvenile offenders so they do not continue to be penalized as adults for youthful mistakes. See, e.g., State v. C.A.E., 148 Wn. App. 720, 201 P.3d 361 (2009) ("It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved, except for governmental agencies."); State v. T.A.W., 144 Wn. App. 22, 186 P.3d 1076 (2008); State v. A.S., 116 Wn. App. 309, 309 n. 1, 65 P.3d 676 (2003) ("Appellant herein is a juvenile and will be referred to by his initials "A.S."); State v. A.M., 109 Wn. App. 325, 325 n.1, 36 P.3d 552 (2001) (same).

Given the goals of the deferred disposition program and the concern for protecting the privacy of juveniles, a juvenile who is granted a deferred disposition retains a privacy interest in his DNA. DNA collection should only be permitted if the deferred disposition is revoked and the conviction will remain public record. Because J.O. successfully completed his deferred

disposition, his privacy interests are more akin to those of an ordinary citizen, and the suspicionless search of compelled DNA sampling was unwarranted.

- ii. Suspicionless, compelled DNA sampling is an intrusion into the private affairs of an ordinary citizen.

For ordinary citizens, Washington has provided “consistent protection” of the privacy of the body and bodily functions, including the passing of urine and the provision of bodily samples for analysis. Robinson, 102 Wn. App. at 810. As Robinson declared, “[t]here is . . . no doubt that the privacy interest in the body and bodily functions is one Washington citizens have held, and should be entitled to hold, safe from government trespass.” Id. at 819.

Indeed, there can be no question that the information revealed under the DNA testing statute is not the type normally exposed to the public or observable without enhancement devices from an unprotected area. It involves the forced extraction of DNA, the microscopic and chemical analysis and typing of that DNA, and the unlimited retention of that information in government databases. Therefore, the information is unquestionably subject to protection under the state constitution. See, e. g., Young, 123 Wn.2d at 182-83 (thermal imaging device directed at a home is an invasion of privacy protected by the state constitution); see also State v.

Jackson, 150 Wn.2d 251, 260-64, 76 P.3d 217 (2003) (government’s planting of a global positioning device is an invasion requiring probable cause and a warrant); State v. Boland, 115 Wn.2d 571, 577-78, 800 P.2d 1112 (1990) (government’s search of garbage cans placed at the curb is an invasion requiring a warrant).

- iii. DNA sampling after a deferred disposition fails to meet the requirements of the special needs exception and fails to present compelling circumstances to justify a suspicionless search.

The Washington Supreme Court has “not been easily persuaded that a search without individualized suspicion can pass constitutional muster.” Robinson, 102 Wn. App. at 815. Indeed, the Court has held that, in the absence of individualized suspicion of wrongdoing, a search is a “general” search, which is never authorized under our constitution except in the most compelling circumstances. Keuhn v. Renton School District, 103 Wn.2d 594, 599, 602, 694 P.2d 1078 (1985). The Surge court did not reach this second step of the analysis because it concluded no private interest was invaded. 160 Wn.2d at 74.

Compelling circumstances may exist if the purpose of the search satisfies the “special needs” exception, defined in Washington not only in light of Fourth Amendment jurisprudence but also by looking at whether the statute authorizing the search is very narrowly drawn and supported by such

compelling state interests that it justifies the invasion into the cherished privacy protections Washington guarantees. See Robinson, 102 Wn. App. at 816-17.

In Robinson, this Court struck down a program requiring applicants for city employment to submit to urine testing for illegal drug use. Id. at 828. The Court noted that the government's interest would only be "compelling" if there were very serious potential jeopardy to the public which would occur if the testing were not done and a person performed a government job while under the influence. Id. at 823-24. The court concluded that the "breathhtakingly broad" program was far from narrowly tailored because it requiring testing of everyone regardless of whether there was any evidence that performing a specific job while intoxicated would cause a serious risk of public safety. Id. Put simply, the Court said, there is no explanation for testing accountants, ushers, librarians or public relations specialists when there is no evidence their duties are "implicating public safety." Id.

Although the program was also motivated by concern about absenteeism, work difficulties, substandard work, more frequent turnover, and liability to third parties caused by drug use on the job, the court rejected this rationale. Id. The Court stated that, despite the important efficiency and cost concerns involved, the need to protect the "fragile values" of privacy

was “acute,” noting that, for example, “police procedure would be vastly less costly and more efficient were it not for the constraints of the constitution.” Id. at 826. The court concluded the testing was not “narrowly tailored” to meet a compelling interest, and thus struck it down. Id. at 827-28.

In this case, RCW 43.43.754 does not meet the “special needs” requirement as applied under the greater protection of our state constitution. The Legislative statement of purpose for this statute declares there is “no compelling interest” in excluding juveniles from the DNA database. Laws of 1994, ch. 271 § 401. But the constitution requires the State to show a compelling interest for subjecting them to this search in the first place. Keuhn, 103 Wn.2d at 599; Robinson, 102 Wn. App. at 823-24. It does not place the burden on the juvenile to show why he should be free from a warrantless and suspicionless search.

The Legislature has also declared the DNA databank is rationally related to the goals of law enforcement. See Laws of 1999 ch. 329 § 1 (“Creating an expanded DNA data bank bears a rational relationship to the public’s interest in enabling law enforcement to better identify convicted violent and sex offenders who are involved in unsolved crimes, who escape to reoffend, and who reoffend after release.”). But again, this rational relationship to law enforcement purposes is insufficient. Both the state and federal constitutions require that a suspicionless search be

narrowly tailored to a compelling interest beyond the normal needs of law enforcement. Keuhn, 103 Wn.2d at 599; Robinson, 102 Wn. App. at 823-24. No such compelling interest exists here.

Far from being “narrowly tailored,” the statute requires even non-violent juvenile offenders whose convictions are vacated and sealed, to submit to a suspicionless search and have their identifying information be made permanently accessible to law enforcement officers nation-wide in order to provide the police with a general tool to do their every day jobs. RCW 43.43.753. There is no question they may be more efficient in doing those jobs. But the interests of efficiency furthered by the statute simply do not justify the intrusion into the protected privacy rights guaranteed by the Washington constitution. Robinson, 102 Wn. App. at 826. Collecting identifying information that will be held permanently and searched regularly from juveniles whose convictions are to be vacated and whose records are to be sealed violates a privacy interest that juveniles should be entitled to hold free from government trespass. This Court should so hold and should reverse.

b. The Compelled DNA Sample Was an Unreasonable Suspicionless and Warrantless Search in Violation of the Fourth Amendment.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and provides this right “shall not be violated, and no warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. “There is no doubt that the nonconsensual removal of blood constitutes a Fourth Amendment search.” In re Juveniles A, B, C, D, E, 121 Wn.2d 80, 90, 847 P.2d 455 (1993); see also Olivas, 122 Wn.2d at 106. The Supreme Court has declared it “obvious” that a penetration beneath the skin to draw blood is a “physical intrusion” that “infringes an expectation of privacy that society is prepared to recognize as reasonable.” Skinner v. Railway Labor Executives Ass’n, 489 U.S. 602, 616, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989). “The ensuing chemical analysis of the sample to obtain physiological data is a further invasion” of a citizen’s privacy interests. Id. at 616. As such, it is unconstitutional unless it is constitutionally reasonable. Schmerber v. California, 384 U.S. 757, 767-68, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966).

In general, a search is not reasonable in the absence of individualized suspicion of wrongdoing. New Jersey v. T.L.O., 469 U.S. 325, 340-41, 105 S. Ct. 733, 748, 83 L. Ed. 2d 720 (1985). There is a limited exception,

permitting searches without such suspicion if there are “special needs” which make the warrant and probable cause requirements impractical. Skinner, 489 U.S. at 619. That exception does not apply, however, when the search is for normal law enforcement purposes. Id. at 620.

The order compelling DNA sampling violated J.O.’s Fourth Amendment rights to be free from unreasonable searches and seizures because it forced him to submit to a suspicionless search that was not authorized by the “special needs” exception to the warrant and probable cause requirements. The stated purposes of such searches under RCW 43.43.754 and the resulting compiling of information for a data bank as set forth when the statute was first enacted were “for future identification and prosecution.” See Olivas, 122 Wn.2d at 90-91 (discussing constitutionality of prior version of statute). More recent legislative enactments have declared that the purpose of the searches and the data bank is to provide an important tool “in criminal investigations, in the exclusion of individuals who are the subject of investigations or prosecutions, and in detecting recidivist acts,” as well as to “assist federal, state, and local criminal justice and law enforcement agencies in both the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons.” RCW 43.43.753.

In addition, the legislature has specifically indicated that biological samples collected under the statute “be used only for purposes related to criminal investigation, identification of human remains or missing persons,” or improvement of the collection system itself. RCW 43.43.753. The purpose of the collected samples is to “be used solely for the purpose of providing DNA or other tests for identification analysis and prosecution of a criminal offense or for the identification of human remains or missing persons.” RCW 43.43.754(2). In greatly expanding the types of offenders who must give biological samples for the data bank in 1999, our Legislature declared:

The legislature finds it necessary to expand the current pool of convicted offenders who must have a blood sample drawn for purposes of DNA identification analysis. The legislature further finds that there is a high rate of recidivism among certain types of violent and sex offenders and that drawing blood is minimally intrusive. Creating an expanded DNA data bank bears a rational relationship to the public’s interest in enabling law enforcement to better identify convicted violent and sex offenders who are involved in unsolved crimes, who escape to reoffend, and who reoffend after release.

Laws of 1999, ch. 329 § 1.

Thus, the purposes of the searches and the resulting data bank are not unusual, “special needs,” but rather the normal law enforcement goals of solving crimes and the ancillary goal of identifying missing persons. Because the statute does not require particularized, individualized suspicion

before the blood draw search and because the purposes served by the statute are not “special needs,” the searches under the statute are unconstitutional under the Fourth Amendment.

In Surge, the court affirmed its prior analysis in Olivas that the suspicionless DNA searches under Title 43 RCW were justified under the “special needs” exception to the warrant and probable cause requirements, because such searches were not primarily for the normal law enforcement purpose of prosecuting current crimes. Surge, 160 Wn.2d. at 79-81. The court also indicated the searches would be permissible under the totality of the circumstances test set forth in the concurrence in Olivas. Surge, 160 Wn.2d at 81. But as discussed above, this case is significantly distinguishable from Surge and Olivas due to both J.O.’s status as a juvenile who has successfully completed a deferred disposition and his accordingly greater expectation of privacy in his body and identity.

In the case of a juvenile whose records are to be sealed, the “special needs” exception does not support the statute. Surge and Olivas concluded the special needs exception to the Fourth Amendment applied because the purpose of the DNA statute is deterring recidivism, not merely “normal” law enforcement. Surge, 160 Wn.2d at 80 (citing Olivas, 122 Wn.2d at 92-93). As a juvenile who has been given a second chance under a deferred disposition, the incentive to deter recidivism is already present in that the

records may only be sealed if he remains crime-free until the age of 18. In essence, J.O. has been given a second chance at going into adulthood with a clean record. The potential for losing that chance is already a more significant deterrent than the mere risk of exposure by DNA evidence.

If juveniles with successful deferred dispositions can be subjected to suspicionless searches, then anyone with anything less than the full panoply of privacy rights is subject to having the government involuntarily draw their blood for testing. As four dissenting judges in a Ninth Circuit case noted, people who meet that standard might include students in public high schools or universities, people seeking driver's licenses, people applying for federal employment, people having federal identification, or people desiring to travel by airplane. United States v. Kincade, 379 F.3d 813, 844 (9th Cir. 2004) (en banc) (Reinhardt, J., dissenting). The Fourth Amendment cannot support such an expansive analysis in cases where the expectation of privacy is not significantly reduced; thus, application of the proper "special needs" analysis is required. This Court should so hold and reverse the trial court's order compelling J.O. to provide a DNA sample.

D. CONCLUSION

The juvenile court lost jurisdiction to adjudicate a violation of the condition requiring a DNA sample when the State failed to file a revocation motion on that basis before expiration of the deferral period. Additionally, the compelled DNA sampling violates J.O.'s state and federal constitutional rights to be free from unreasonable searches. J.O. therefore requests this Court reverse the trial court's order compelling him to provide the sample and order that the sample being held by Whatcom County Juvenile Probation be destroyed.

DATED this 21st day of March, 2011.

Respectfully submitted,

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Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 66462-0-1
)	
JACOB ORCUTT,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 22ND DAY OF MARCH, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SHANNON CONNOR
WHATCOM COUNTY PROSECUTOR'S OFFICE
311 GRAND AVENUE, SUITE 201
BELLINGHAM, WA 98227

[X] JACOB ORCUTT
8590 GINKO DRIVE
MAPLE FALLS, WA 98266

SIGNED IN SEATTLE WASHINGTON, THIS 22ND DAY OF MARCH, 2011.

x Patrick Mayovsky

[Handwritten signature]
MAY 11 10 11 AM '11
CLERK OF COURT