

COURT OF APPEALS OF MARYLAND

Corbin v. State

428 Md. 488 (2012) · Decided August 22, 2012

OPINION

ADKINS, J.

ADKINS, J. We again examine the evolving law regarding the scope of Fourth Amendment protections in the context of the collection and analysis of DNA by police. Unlike in earlier Maryland cases, the Maryland DNA Collection Act does not apply here because Petitioner Tonto Corbin was not arrested for any of the Act's predicate offenses.¹ Rather, Corbin was on probation for a drunken driving offense when his DNA was collected.

The DNA was taken from saliva that Corbin left on a straw in the course of complying with an alcohol monitoring program mandated by the terms of his probation. Corbin challenges the use of that saliva in connection with a separate murder investigation that resulted in incriminating evidence against him. *492The trial court denied Corbin's motion to suppress the DNA evidence on Fourth Amendment grounds.

The State then introduced the DNA and lab report into evidence to prove his connection to the homicide, and he was convicted of involuntary manslaughter. Corbin appealed to the Court of Special Appeals. That court, in an unreported opinion, rejected his claim that the seizure of his DNA without a warrant violated the Fourth Amendment, ruling instead that Corbin did not have a reasonable expectation of privacy in either the testing straw or the DNA on it.

We granted certiorari to address the following questions, as Corbin phrased them: 1. Does a DWI probationer, who had previously declined police requests to seize and test his DNA, voluntarily surrender his breath for DNA testing where State officers seize his DNA on the false pretense of seizing and testing only his blood alcohol? 2.

In an entirely circumstantial case, was the evidence of Petitioner's criminal agency legally insufficient because the State failed to establish that it was any stronger than evidence implicating two or three other suspects?

We shall hold that Corbin's Fourth Amendment rights were not violated when the State recovered his DNA from the straw utilized for this mandatory test. We shall also hold that the evidence was sufficient to sustain Corbin's conviction.² Statement of Facts and Legal Proceedings In December 1995, Jacqueline Tilghman's body was discovered near a farm road in Somerset County.

The investigation *493concluded that the cause of her death was homicide, committed where she was found. Semen was found on vaginal and anal swabs taken of the victim. DNA samples obtained from the swabs were turned over to the Maryland State Police crime laboratory for further testing and storage.

The investigation into her death continued into 2001, at which point Corbin was identified as an associate of the victim. Investigators asked Corbin to voluntarily submit a DNA sample, but he declined. Investigators discovered that Corbin was on probation for a DWI conviction and therefore subject to court-ordered breath tests for alcohol consumption. One testing method is a “deep lung” test, requiring the probationer to blow into a straw.

Upon learning that the straw would be discarded following the test, investigators arranged with Corbin’s probation officer to secure the straw after he had completed this test. Once obtained, the straw was sent to the crime lab for DNA analysis.

The crime lab matched Corbin’s DNA on the straw to DNA in the semen recovered from the vaginal and anal swabs of the victim taken earlier in the homicide investigation. Based on the match, police obtained a warrant for another DNA sample from Corbin, which confirmed the match. It was the second DNA sample that, ultimately, was admitted into evidence against Corbin over the defense objection.

In 2004, Corbin was indicted for murder.³ Before trial, Corbin filed a motion to suppress the DNA evidence on the grounds that the seizure of his DNA by the State without a warrant violated his rights under the Fourth Amendment.

The State argued that there was no Fourth Amendment violation because Corbin was on probation, the terms of which required him to submit to the breath test from which the DNA was extracted. Corbin’s motion was denied by Judge Daniel M. Long of the Circuit Court for Somerset County, who explained: *494The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined... by assessing on the one hand the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interest.

With respect to those persons on probation, however, it has been held inherent in the very nature of probation... that probationers do not enjoy the absolute liberty to which every citizen is entitled. [A] case... out of the Third Circuit, U.S. v[.] Sczubelek... involved the taking of a DNA sample from a probationer. And although not directly on point there was mention that probationers do not enjoy the same liberties that ordinary citizens enjoy.

The court noted in its opinion that probation officers have a special need to supervise probationers apart from a normal law enforcement need that justifies a departure from the normal warrant and probable cause requirements. This Court therefore[,] in balancing the privacy rights of the

defendant against legitimate interests of the state, is not persuaded that the DNA sample taken from the breath tube or breath straw obtained from the defendant through the efforts of his probation agent violates his Fourth Amendment rights under the constitution.

After Corbin waived his right to a trial by jury, the parties submitted the case to the Circuit Court on an agreed statement of facts, and Judge Long found Corbin guilty of involuntary manslaughter. The judge sentenced Corbin to ten years' imprisonment, with all but eight years suspended, and two years supervised probation.

The statement of facts was read into the record as follows: The evidence in this case would show that, at approximately 7:20 a.m. on the morning of December 27th, 1995, the body of [the victim], a thirty-two-year-old black female, was found by Ronald and Elwood Hall while the Halls were checking their muskrat traps on their farm located on *495Marumsco Road, one mile West of Cornstack Road in Marion, Somerset County, Maryland.

The victim was found [lying] on her back with her head tilted to the right. Her entire head and shoulder area were covered with blood. The front and left side of her head was severely injured. Her right arm was down to her left side. She had gloves on both hands. A blood-soaked white [sweatshirt] was on the upper body and was pushed up, exposing her breast.

Her bra was also pushed up over her breast. A pair of white panties, white [sweatpants], and black jeans were all down around her ankle on the right leg. A large abrasion and bruise was obvious to the middle of the victim's chest.

The ground... around the victim's head and upper body was saturated with blood. The surrounding tall grass vegetation was splattered with blood as far as eleven feet south of the victim and extending toward the ditch that parallels Marumsco Road. Blood spatter was also found from the body to the center of the dirt lane, in as high as six feet on tall grass vegetation surrounding the victim to approximately] eight inches in diameter.

Blood soaked areas were on the ground and grass next to the east side of the lane by the victim. These facts indicate that the crime occurred at this location. An autopsy was subsequently performed at the office of the medical examiner for the State of Maryland by Doctor Locke of that office. Doctor Locke would testify that the victim died of strangulation and blunt force injuries to the head.

The pattern of injuries to the external and internal structures of the neck [was] most consistent with a manual-type strangulation. The pattern of blunt force injuries to the left side of the face and temple region were consistent with the deceased having received a minimum of five to six blows to that area by a hard, blunt object.

The manner of death was homicide. Evidence was collected from the victim at the scene and sent to the Maryland State Police crime lab for analysis. The results of that analysis would show that [Corbin's] DNA *496profile was found on the vaginal and anal swabs of the victim. No other DNA profile other than the victim's was found on those swabs. Wesley Phillips's DNA profile was found in the underpants — the crotch of the underpants of the victim and in the crotch of the [sweatpants] of the victim.

There was also possibly another partial DNA profile on the underpants. That profile was not identified, but [Corbin] was excluded [as] a source of that profile. There was an unidentified source on the crotch of the victim's jeans. Witnesses would testify that the victim was with Wesley Phillips earlier in the evening on December 27th of 1995.

The State would present two expert witnesses in the case: Argi Magers, who is a forensic chemist for the Maryland State Police crime lab, as well as Dr. Locke, who is a medical examiner for the State of Maryland. The State would seek testimony from those witnesses that the victim never stood up after intercourse because there was no evidence that [Corbin's] semen had drained on to any of the victim's clothing.

The State's experts would testify that the absence of [Corbin's] semen on the victim's clothing was consistent with the victim not standing up after intercourse. And they would testify that the underwear and clothing would be a likely place to look for drainage of semen.

However, the defense would offer two experts also: Elizabeth Johnson, who is a forensic biologist and evidence analyst, as well as Doctor Gill, who is a medical examiner. And they would testify, and the State's experts would agree, that this drainage theory could not be supported by an opinion of reasonable medical or scientific certainty because of other variables that could enter into the drainage possibilities.

Additionally, Doctor Locke would testify that the sex and the death could not be forensically linked. During this investigation, [Corbin] was contacted in 1998 by Corporal McQueeney of the Maryland State Police. At that time, [Corbin] denied having any sexual contact with the victim for years prior to her death. [Corbin] was again contacted by Sergeant McCauley of the Maryland State *497Police in 2000.

[Corbin] again denied having any contact with the victim for years prior to her death. Approximately one hundred witnesses were interviewed during this investigation. And although an exact [timeline] could not be established, the evidence would show that the last witness to see the victim alive saw the victim at approximately 1:30 a.m. on the 27th, wearing the same clothing that she was found in.

Gladys Johnson, who is [Corbin's] aunt, would testify that [Corbin] told her that he had had sex with the victim between 2:00 and 3:00 a.m. on December 27th of 1995. These events occurred in

Somerset County, Maryland. And [Corbin] is the defendant seated at defense table next to defense counsel in an orange jumpsuit. (Punctuation added.) Corbin appealed to the Court of Special Appeals, challenging the denial of his motion to suppress the DNA results, and claiming that the evidence was legally insufficient to support his conviction.

In an unreported opinion, the intermediate appellate court rejected his Fourth Amendment claim, relying on our decision in *Williamson v. State*, 413 Md. 521, 538, 993 A.2d 626, 636 (2010), to hold that Corbin did not have an expectation of privacy in either the straw or the DNA obtained from it.

The court also held that a rational trier of fact could conclude that Corbin was guilty of involuntary manslaughter beyond a reasonable doubt. We granted certiorari on both issues, see *Corbin v. State*, 420 Md. 463, 23 A.3d 895 (2011), and shall affirm the judgment of the Court of Special Appeals. Discussion I. DNA As we said in *Williamson*: When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party *498that prevailed on the motion.

We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must "make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." (Citations omitted.) *Williamson*, 413 Md. at 531-32, 993 A.2d at 632.

The parties have devoted much of their argument to abandonment. The State's argument on this ground is that Corbin abandoned the straw because he "made no effort to gain possession of the straw after the test was administered." If Corbin is deemed to have abandoned the DNA on the straw, then the Fourth Amendment would not apply.

As we said in *Stanberry v. State*, Fourth Amendment protection... does not extend to property that is abandoned. By abandoning property, the owner relinquishes the legitimate expectation of privacy that triggers Fourth Amendment protection. (Citations omitted.) *Stanberry v. State*, 343 Md. 720, 731, 684 A.2d 823, 828-29 (1996).

In *Williamson*, a suspect was arrested and, while he was in jail, investigators brought him a meal from McDonald's; the DNA from his discarded McDonald's cup was ultimately used to convict him on another matter. See *Williamson*, 413 Md. at 524, 527-28, 993 A.2d at 628, 630.

In that case, the suspect had accepted the investigators' offer of food and thrown the wrappers and cup on the floor of his jail cell. *Id.* at 536, 993 A.2d at 635. By doing so, we held, he abandoned the refuse, and the seizure of DNA was constitutional. *Id.* at 533-37, 993 A.2d at 633-635.

We reaffirm the holding in *Williamson*, but we conclude that the abandonment theory utilized there is not applicable here. Realistically, Corbin had no option to retain the straw as his own or protect his DNA from being taken. While in *Williamson*, the suspect was offered McDonald's food and voluntarily accepted, Corbin here was taking an alcohol monitoring test, mandated by his probation officer while on probation for a drunk driving offense.

We do not subscribe to the notion that the Fourth Amendment is not applicable because Corbin voluntarily ceded a privacy interest in his saliva and the straw by failing to make an effort to "gain possession" of the State-owned and State-administered testing apparatus, from which his DNA was extracted.⁴ Instead, the Fourth Amendment applies and governs this case.

The Fourth Amendment provides: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Fourth Amendment applies to Maryland through the Fourteenth Amendment. See *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961); *Owens v. State*, 322 Md. 616, 622, 589 A.2d 59, 61 (1991).

Under the Fourth Amendment, Corbin has the burden of demonstrating that he has a legitimate expectation of privacy in the material to be seized. Case law requires that a "person claiming protection under the Fourth Amendment demonstrate an actual (subjective) expectation of privacy in the item or place searched, as well as prove that the expectation is one that society is prepared to recognize as reasonable." See, e.g., *Williamson*, 413 Md. at 534, 993 A.2d. at 634.⁵ Undoubtedly, the collection of blood for DNA profiling constitutes a search for Fourth Amendment purposes. ⁵⁰⁰*Skinner v. Ry.*

Labor Executives' Ass'n, 489 U.S. 602, 616, 109 S.Ct. 1402, 1412, 103 L.Ed.2d 639 (1989) ("Obtaining and examining the evidence may also be a search, if doing so infringes an expectation of privacy that society is prepared to recognize as reasonable[.]" (citations omitted)). Collection of a person's DNA by use of a buccal swab is also subject to Fourth Amendment standards, but is less intrusive than a blood test.

See *King*, 425 Md. at 555-56, 42 A.3d at 552-53 (observing that swabbing the inside of a suspect's mouth is a search); *State v. Raines*, 383 Md. 1, 17-19, 857 A.2d 19, 29 (2004) (describing the invasion of a buccal swab to be "minimal at most"). Corbin's claim is subject to the two-part rubric articulated in *Williamson*: Did he have an actual expectation of privacy in his DNA, and if so, is society prepared to recognize that expectation as reasonable?

We assume his actual or subjective expectation of privacy without discussion, and proceed to the question of whether, as a probationer subject to mandatory alcohol testing, Corbin had a

reasonable expectation of privacy in his DNA left on the straw after such a test.

The Supreme Court, in *United States v. Knights*, 534 U.S. 112, 118-19, 122 S.Ct. 587, 591, 151 L.Ed.2d 497 (2001), provides the framework for evaluating a probationer's privacy expectations in this context. *Knights* was sentenced to probation for a drug offense. "The probation order included the following condition: that *Knights* would submit his... person, property, place of residence, vehicle, personal effects, to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer." *Id.* at 114, 122 S.Ct. at 589 (quotation marks omitted).⁶ *501 *Knights* agreed to the terms of the probation order.

Id. Three days later, a public utility telecommunications vault was pried open and set on fire — the latest of a series of thirty acts of vandalism against the public utility. *Id.* Shortly before the incidents, the company had filed a "theft-of-services complaint" against *Knights* for failure to pay his utility bill and discontinued his utility service. *Id.* at 114-15, 122 S.Ct. at 589.

The police, in a surveillance operation, observed a friend of *Knights* leave *Knights's* apartment at 3:10 a.m., with cylindrical items that looked like "pipe bombs," and walk to a nearby river, where he dumped them in the water. *Id.* at 115, 122 S.Ct. at 589. Police then observed a number of suspicious objects in this friend's truck: a Molotov cocktail and explosive materials, a gasoline can, and two brass padlocks that fit the description of those removed from the PG & E transformer vault.

Id. Based on these facts and knowing that *Knights* was on probation, police entered and searched *Knights's* apartment without a warrant. *Id.* Inside, they found extensive items incriminating *Knights*, which later became the subject of a suppression hearing. *Id.* at 115-16, 122 S.Ct. at 589-90.

The District Court granted the motion to suppress on the ground that the search was for "investigatory" rather than "probationary" purposes, a decision that was affirmed by the Ninth Circuit Court of Appeals. *Id.* The Supreme Court considered *Knights's* probation and also confronted the question of whether the search must relate to the person's probationary status: Certainly nothing in the condition of probation suggests that it was confined to searches bearing upon probationary status and nothing more.

The search condition provides that *Knights* will submit to a search "by any probation officer or law enforcement officer" and does not mention anything about purpose. The question then is whether the Fourth Amendment limits searches pursuant to this probation condition to those with a "probationary" purpose. (Citation omitted.) *502 *Id.* at 116, 122 S.Ct. at 590.

The Court impliedly answered this question in the negative by concluding that, when there was reasonable suspicion that a probationer committed a crime, even though unrelated to his

probation, police could search the probationer's home, despite the absence of probable cause or a search warrant. *Id.* at 117-20, 122 S.Ct. at 590-92.

The Supreme Court concluded that probationers have diminished expectations of privacy, discussing at length the inherent policy concerns in such cases: The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.

Knights's status as a probationer subject to a search condition informs both sides of that balance. Probation, like incarceration, is a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty. Probation is one point... on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service.

Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled. Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens. (Citations and quotation marks omitted.)

Id. at 119, 122 S.Ct. at 591. The Court declined to adopt the government's theory that when Knights agreed to such searches as an explicit condition of his probation, he had waived his Fourth Amendment rights.⁷ *Id.* at 118, 122 S.Ct. at 591. Instead, the Court preferred a "totality of the circumstances" analysis: *503In the Government's view, Knights's acceptance of the search condition was voluntary because he had the option of rejecting probation and going to prison instead, which the Government argues is analogous to the voluntary decision defendants often make to waive their right to a trial and accept a plea bargain.

We need not decide whether Knights's acceptance of the search condition constituted consent in the... sense of a complete waiver of his Fourth Amendment rights, however, because we conclude that the search of Knights was reasonable under our general Fourth Amendment approach of "examining the totality of the circumstances," *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct.

417, 136 L.Ed.2d 347 (1996), with the probation search condition being a salient circumstance. *Id.* The Court emphasized the government's legitimate concerns about the conduct of probationers: In assessing the governmental interest... it must be remembered that the very assumption of the institution of probation is that the probationer is more likely than the ordinary citizen to violate the law.

The recidivism rate of probationers is significantly higher than the general crime rate. And probationers have even more of an incentive to conceal their criminal activities and quickly

dispose of incriminating evidence than the ordinary criminal because probationers are aware that they may be subject to supervision and face revocation of probation, and possible incarceration, in proceedings in which the trial rights of a jury and proof beyond a reasonable doubt, among other things, do not apply[.]

(Citations and quotation marks omitted.) *504Id. at 120, 122 S.Ct. at 592. In the Court’s view, we must be dual-minded when assessing probationers: The State has a dual concern with a probationer. On the one hand is the hope that he will successfully complete probation and be integrated back into the community.

On the other is the concern, quite justified, that he will be more likely to engage in criminal conduct than an ordinary member of the community. [The Ninth Circuit Court of Appeals] in this case would require the State to shut its eyes to the latter concern and concentrate only on the former. But we hold that the Fourth Amendment does not put the State to such a choice.

Its interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may therefore justifiably focus on probationers in a way that it does not on the ordinary citizen. (Citations and quotation marks omitted.) Id. at 120-21, 122 S.Ct. at 592. *Knights* instructs us, then, that probationers do not enjoy the same liberty rights as other citizens and have fewer legitimate expectations about privacy than law-abiding citizens.

We acknowledged this limitation in *King*, our most recent case involving police collection of DNA. See generally *King*, 425 Md. at 563-65, 42 A.3d at 557-58. There, we examined DNA collected via a buccal swab of a person who had been arrested, but not convicted, and who was not on probation. Id. at 593-94, 42 A.3d at 575-76.

We held that such collection was a violation of the person’s Fourth Amendment constitutional rights because he was a “mere arrestee,” as compared to a convicted felon. Id. at 594, 42 A.3d at 576 (“As we held in *Raines*, once a person has been adjudicated lawfully to be a felon, his or her expectation of privacy is ‘severely reduced’ and the State’s interest prevails in monitoring, identifying, reintegrating, and preventing recidivism by the felon.”).

Judge Harrell, writing for the Court, was careful to delineate the boundaries of our holding: “The State here can not claim the same public safety interests present in cases addressing convicted felons, parolees, or probationers.” Id. at 598, 42 A.3d at 578. *505In *Samson v. California*, 547 U.S. 843, 846, 126 S.Ct. 2193, 2196, 165 L.Ed.2d 250 (2006), the Supreme Court reviewed a California law requiring every prisoner released on parole to be subject to a search or seizure by a parole officer or other peace officer at any time, with or without a warrant or probable cause.

Extending its ruling in *Knights*, the Court held that, with respect to an individual on parole from his prison sentence, “the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee.” Id. at 857, 126 S.Ct. at 2202 (internal quotation marks

omitted). Samson was on parole “following a conviction for being a felon in possession of a firearm[.]” Id. at 846, 126 S.Ct. at 2196, and the Court focused on that status, finding it a more restricted status than probation: As we noted in *Knights*, parolees are on the “continuum” of state-imposed punishments.

On this continuum, parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment. As this Court has pointed out, parole is an established variation on imprisonment of convicted criminals....

The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abides by certain rules during the balance of the sentence. In most cases, the State is willing to extend parole only because it is able to condition it upon compliance ■ with certain requirements. (Citations and quotation marks omitted.) Id. at 850, 126 S.Ct. at 2198.

Two questions unanswered by the Supreme Court or this Court in DNA collection cases are pertinent here. First, how should the principles of *Knights* be applied when the defendant is on restricted release from a misdemeanor, rather than from a felony, as in both *Knights* and *Samson*?

Second, how much weight should we give to the fact that Corbin’s DNA was collected pursuant to a probation order requiring submission to drug or alcohol monitoring, when we consider Corbin’s Fourth Amendment privacy interests with regard to the retention and use of his DNA to investigate other crimes?

We *506need not decide these questions in a vacuum. Rather, we shall consider them in the context of applying the *Knights* totality of the circumstances test to determine whether the search conducted in this case was reasonable. See *Knights*, 534 U.S. at 118, 122 S.Ct. at 591.8 We first consider the interests of the State. A. Interests of the State We start with the recognition, favorable to the State, that this was not a suspicionless search like the one the Supreme Court considered in *Samson*.

In 2000, Sgt. McCauley was assigned to take over the homicide investigation respecting the 1995 death of Jacqueline Tilghman. At that point, although extensive investigation had been done, no arrest had been made. McCauley testified at the suppression hearing that he began his investigation by reading the reports written by the original investigator. By doing so, he learned the names of several people who “had contact with the victim during that period of time[.]” The victim had engaged in prostitution, and in some cases the phrase “had contact” clearly referred to having sexual relations with the victim.

McCauley decided that he would seek DNA samples from these people, to compare against semen found on the victim and in her clothing. After securing consent and receiving test results from all except Corbin, he learned that none of their DNA matched the DNA from the semen found on the

victim. With Corbin still on his list of potential suspects, McCauley next did a background check and learned that Corbin was on probation for a DWI offense.

In a nutshell, we know that before McCauley approached Corbin's probation officer in February 2001, he had information to suggest that Corbin knew the victim. Furthermore, of *507the people identified as associates of the victim,⁹ Corbin was the only one whose DNA had not been tested. McCauley had other suspicious information about Corbin as well. McCauley testified at the suppression hearing that the first thing he did upon taking over the investigation was to read the entire investigation file, covering police work done over approximately five years.

Information gleaned from that file included a report from a third party that the victim "did not get along with Tonto Corbin, because she refused to get involved with him;" that Corbin had been seen with the victim and another person on the day of her death; and that Corbin, when arrested on an unrelated crime, "reluctantly stated he had intimate contact" with the victim but that "it was a mistake that occurred a long time ago" and that he had not "had any intimate contact with the victim for years preceding her death."¹⁰ We conclude that all of these facts, taken together, are sufficient to establish reasonable suspicion, as required in *Knights*.

See also *United States v. Midgette*, 478 F.3d 616, 625 (4th Cir.2007) ("Reasonable suspicion may be based simply upon a tip that has 'some particular indicia of reliability.'... [In another case,] a tip received by a detective that 'there were or might be guns in [the probationer's] apartment' provided the probation officer with reasonable suspicion." (citing *United States v. Perkins*, 363 F.3d 317, 324-26 (4th Cir.2004); *Griffin v. Wisconsin*, 483 U.S. 868, 871, 107 S.Ct.

3164, 3167, 97 L.Ed.2d 709 (1987))); *United States v. Hagenow*, 423 F.3d 638, 642-43 (7th Cir.2005) (holding that police had reasonable suspicion when they received tip from a confidential informant that a probationer had guns in his home); *508*United States v. Keith*, 375 F.3d 346, 350-51 (5th Cir.2004) (applying *Knights* to hold that probationer could be searched based on reasonable suspicion, even though no condition of probation existed that expressly allowed search); *State v. Anderson*, 733 N.W.2d 128 (Minn.2007) (upholding the search of probationer's home based on double hearsay information given by telephone to a police officer from a person the officer did not know, who said that her daughter knew probationer and that he had guns; holding it is " 'reasonable to permit information provided by a police officer, whether or not on the basis of firsthand knowledge, to support a probationer search' " (quoting *Griffin*, 483 U.S. at 879-80, 107 S.Ct. at 3171-72)).

The trial court considered Corbin's status as a probationer to be significant to the balance between Corbin's rights and the State's interests, and we agree. As the Supreme Court has established, the State has a heightened interest in probationers with regard to "recidivism, public safety, and reintegration[.]" *Samson*, 547 U.S. at 855 n. 4, 126 S.Ct. at 2201 n. 4.

The Supreme Court said in *Knights* that “ ‘the very assumption of the institution of probation’ is that the probationer ‘is more likely than the ordinary citizen to violate the law.’ ” *Knights*, 534 U.S. at 120, 122 S.Ct. at 592 (quoting *Griffin*, 483 U.S. at 880, 107 S.Ct. at 3172).

As we indicated above, both *Knights* and *Samson* involved defendants on probation from felony offenses, and it was clear that the Supreme Court and this Court focused only on felony probationers. Although the record does not contain the verdict against Corbin for the DWI, we assume that Corbin was convicted of a misdemeanor. See Md.Code (1977, 2009 Repl. Vol., 2011 Cum.Supp.), § 27-101(a) of the Transportation Article (“It is a misdemeanor for any person to violate any of the provisions of the Maryland Vehicle Law unless the violation: (1) Is declared to be a felony by the Maryland Vehicle Law or by any other law of this State; or (2) Is punishable by a civil penalty under the applicable provision of the Maryland Vehicle Law.”).

We have no information to suggest that Corbin’s *509 underlying DWI offense was a felony or was punishable only by a civil penalty. Yet this misdemeanor offense, unlike many misdemeanors, carries the potential for significant jail time. Drunken driving carries the allowable penalty of imprisonment for up to one year (first offense), two years (second offense) or three years (third offense).

See generally § 27-101(k)(1) of the Transportation Article. Moreover, we consider the serious nature of a drunk driving offense. According to the Maryland Task Force to Combat Driving under the Influence of Drugs and Alcohol (“Task Force”), “an average of 220 people died annually as a result of impaired-driving-related crashes on Maryland roads between 2004 and 2007.” See Md. Task Force to Combat Driving under the Influence of Drugs and Alcohol, Findings and Recommendations 1-2 (October 2008).

This equates to eighteen deaths each month, or a death every 40 hours, and such impaired-driving-related crashes make up approximately 40 percent of all traffic crashes in Maryland. See *id.* As the National Highway Traffic Safety Administration explains, “impaired driving can be defined as a reduction in the performance of critical driving tasks due to the effects of alcohol or other drugs.

It is a serious crime that kills [nationally] every 30 minutes.” *Id.* at 1-1. Drunken driving also has a high rate of recidivism. See *id.* at 3-44 (“An increasing number of [DWI] arrests are repeat offenders. It is important that repeat offenders be effectively identified so that appropriate sanctions, assessment, and treatment can be provided to reduce [the] risk of repeated offenses.”); cf. Section 27-101(k)(1) of the Transportation Article (providing increased penalties for repeat offenders).

Although a chronic DWI offender may not intend to commit injury when he undertakes to drive while impaired, injuries and fatalities still occur, and the State’s interest in monitoring such conduct is as great as if the injuries were intended.

Thus, it is fair to say that the Supreme Court's rationale for increased control over probationers applies here as well. *510 For these reasons, we hold that a person on probation from a drunken driving offense has, like the probationer in *Knights*, a significantly diminished expectation of privacy.¹¹ Moreover, a probationer's expectation of privacy is diminished even when the new crime under investigation is not related to the crime that led to the probation sentence.

See *Knights*, 534 U.S. at 117-18, 122 S.Ct. at 590-91. Accordingly, that Corbin's probation stems from a drunken driving offense does not proscribe applying the *Knights* "diminished expectation" rationale to a murder investigation. B. Corbin's Privacy Interests We now shift our focus to examine Corbin's rights and legitimate expectations.

First, we consider the distinction Corbin suggests between the breath test ordinarily used to detect alcohol and the test used in this case: The breath test ordinarily used to detect alcohol would have required Mr. Corbin to only blow into a cup-like device placed over his mouth.

The "deep-lung" test required Mr. Corbin to place a straw in his mouth, create a tight seal around it with his lips, and blow. We are not persuaded that this difference is material. Corbin did not object to parting with his saliva.

As far as he was aware, the purported invasion of privacy was no different than what he endured every month as required by the terms of his probation. We see no greater invasion of privacy just because one must exert his facial muscles a little extra to perform the "deep-lung" test.

We do not ignore the more profound notion that Corbin's privacy is implicated not only by submission to the breathalyzer, but also by the entry of the profile into CODIS, the national DNA database. See *Skinner*, 489 U.S. at 616, 109 S.Ct. at 1413 ("The ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested *511 employee's privacy interests.").

In his brief, Corbin eloquently narrates the potential for seismic changes in an individual's relationship with government and loss of privacy that may arise as police take advantage of scientific advances in the field of cellular biology.¹² We share concerns about these unsettling scenarios posited by Corbin. Even so, we must balance our concerns for individual privacy with the legitimate needs of the State, and we must draw lines, an often exacting chore, reaching imperfect results.

C. Balancing Based on the Supreme Court holdings in *Knights* and *Samson*, and our own precedent, we conclude that the circumstances presented here fall on the State's side of the balance. It is a key factor that Corbin's DNA was collected during his regular, probation-mandated testing for alcohol abuse.

The reasonable suspicions generated by the police's investigation of the murder further tilt this factor in the State's favor. Unlike the Petitioner in *King*, Corbin forfeited much of his right to privacy, if only for a limited time, by accepting probation for his earlier crime. Even if we were to consider the entry of Corbin's legally obtained DNA into CODIS as a second search, the larger concerns for privacy presented in Corbin's brief are not manifested in this case because such entry occurred, and the match was found, while he was still on probation.

We see nothing in Fourth Amendment jurisprudence that allots a probationer a privacy interest that would prevent law enforcement, during the period of probation, from testing his legally collected DNA against the CODIS. Compare generally *United States v. Davis*, 657 F.Supp.2d 630 (D.Md.2009) (police legally obtained DNA from defendant's hospital visit, but violated the Fourth Amendment by retaining the DNA profile in a database for use years later).¹³ *512 Other privacy questions will remain for another day.

We do not decide, for example, how long Corbin's DNA may remain in CODIS, especially if State law is modified to allow use of DNA for purposes other than merely creating an identifying profile, or if scientific advances make it feasible to extract predictive genetic information from the "junk" DNA already gathered. See, e.g., *King*, 425 Md. at 568 n. 17, 42 A.3d at 560 n. 17 ("There is... considerable current debate as to whether these 'non-coding' or 'junk' DNA provide no predictive genetic information.") (citing Simon A. Cole, *Is the 'Junk' DNA Designation Bunk?*, 102 Nw.

U.L.Rev. 54, 54 (2007)); *United States v. Weikert*, 504 F.3d 1, 12-13 (1st Cir.2007) ("[W]e agree that, should the uses to which 'junk DNA' can be put be shown in the future to be significantly greater than the record before us today suggests, a reconsideration of the reasonableness balance struck would be necessary.

However, on the record before us, the possibility that junk DNA may not be junk DNA some day also does not significantly augment [the] privacy interest in the present case." (citation and quotation marks omitted)). In sum, Corbin expected to submit to a breath test, and he did so at the ordinary time and place called for by his probation schedule. McCauley waited approximately a month for Corbin to come in for customary alcohol monitoring by his probation agent.

We reject out of hand Corbin's argument that "the only governmental interest assert[ed] was to evade judicial scrutiny." He rests this theory on McCauley's testimony that he surreptitiously collected Corbin's DNA because he did not want to "tip [his] hand" by obtaining a search warrant. That the State has a heightened interest in a *513 probationer has been firmly established by the Supreme Court in *Knights* and *Samson*, and nothing McCauley said or failed to say in answer to that particular question detracts from that interest.

Indeed, the Supreme Court in *Knights* found legitimate a warrantless surprise search of a probationer's home. Surely, *Knights*'s expectation of privacy in his home was greater than Corbin's expectation of privacy in a straw that the State supplied for use in its fully legitimate monitoring of Corbin's alcohol consumption, and that was never in Corbin's possession.

Accordingly, Corbin cannot meet the two-part test for a legitimate privacy interest outlined in *Williamson* and our other cases. See *Williamson*, 413 Md. at 534, 993 A.2d at 634; *Venner v. State*, 279 Md. 47, 51-52, 367 A.2d 949, 952 (1977). Corbin's claim fails, and we affirm the trial court's denial of his motion to suppress the DNA evidence connecting him to the crime.

II. Sufficiency of the Evidence Corbin also challenges the sufficiency of the evidence against him. The trial court convicted Corbin of involuntary manslaughter, and the conclusion that Corbin "was present at the time of the death of the victim" was a foundation of the conviction. Corbin attacks this portion of the trial court's conclusion, arguing that it "lacks reasonable support in the statement of facts."¹⁴ *514 "The critical inquiry on review of the sufficiency of the evidence to support a criminal conviction... is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Smith v. State*, 415 Md. 174, 184, 999 A.2d 986, 991 (2010).

As we explained, this standard applies when circumstantial evidence is the basis for a conviction: Circumstantial evidence is sufficient to sustain a conviction, but not if that evidence amounts only to strong suspicion or mere probability.

Although circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture. (Citations and quotation marks omitted.) *Id.* at 185, 999 A.2d at 992. Corbin directs us to the physical evidence — semen from multiple men was found on the victim's clothing. Corbin thus argues that the victim had sex with multiple partners in an indeterminable order on the night she was killed.

From there, he claims it is impossible to determine who was present when the victim was killed, which creates reasonable doubt of Corbin's guilt. The State counters that the evidence was sufficient to support the conclusion that Corbin is guilty beyond a reasonable doubt. Corbin's semen was found in the victim's vagina and anus, but not on her clothing — according to the facts read into the record at the Circuit Court — and the State says this indicates the victim did not stand up after having sexual intercourse with Corbin.

According to the State, the victim's failure to stand up after intercourse, combined with the circumstances in which her body was found — partially naked in a field on a below-freezing night — demonstrates that Corbin inflicted the fatal blows. *515 Indeed, the following relevant facts were stipulated: the victim was found lying on her back; Corbin's semen was found in the victim's

body, but none of it was found in her underwear; and semen from another man was found in the crotch area of her panties, which were found around the ankle of her right leg.

From those facts, fair and rational inferences could be drawn that the panties had been moved from her waist area after another man had sex with her and before Corbin ejaculated; Corbin was the last one to have sex with her; the victim remained in a supine position after Corbin ejaculated; and thus Corbin was the one who killed her. Tellingly, the record also indicates Corbin lied to the police twice about his sexual history with the victim before admitting he had sexual intercourse with her near the time she died.

As the Court of Special Appeals described: Among the undisputed facts are that Ms. Tilghman was seen alive at approximately 1:30 a.m. on the day she was killed, wearing the same clothes that were found with her body at 7:30 a.m. that day and that Corbin admitted having had sex with the victim as late as 3:00 a.m. on that day.

Thus, Ms. Tilghman, after 1:30 a.m., would have to have changed clothes, encountered Corbin, engaged in consensual sex with him (presumably in a warm place), changed back into the same clothes she had worn earlier, gone out from that place, and encountered the murderer. Or, after 1:30 a.m., she would have to have encountered Corbin, engaged in sex with him (presumably in a warm place), put back on the same clothes she was wearing earlier, gone out from that place, and encountered the murderer.

Under either scenario, the finder of fact, in order to conjure a reasonable hypothesis of innocence, would have to conclude that the actual murderer transported Ms. Tilghman from the place of their encounter [to where she was found] without a detectable and identifiable trace of Corbin's semen getting on her panties. Further, the fact finder would have to conclude that, once in the [field], the actual murderer beat the victim, took down her clothing, and strangled her, but never raped her, or raped her "without leaving any semen *516and without disturbing, from any orifice, the residuals of semen deposits made by Corbin at 3:00 a.m.

Viewing these facts in the light most favorable to the prosecution, in concert with the State's theory of the timing of the events on the night of the slaying, we believe a rational trier of fact could conclude that Corbin was present at the time of the victim's death. A rational trier of fact could further conclude that involuntary manslaughter was proved beyond a reasonable doubt.

We therefore hold that sufficient evidence exists to sustain Corbin's conviction. Conclusion For the reasons stated above, we affirm the Circuit Court for Somerset County's denial of Corbin's motion to suppress the DNA evidence from the straw.

We also affirm the Court of Special Appeals' judgment that the evidence was legally sufficient to convict Corbin. JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. PETITIONER TO PAY COSTS. BATTAGLIA, J., concurs. BELL, C.J., and GREENE, J.,

dissent.. See *King v. State*, 425 Md. 550, 555, 42 A.3d 549, 552 (2012) ("[The] Maryland DNA Collection Act... purports to authorize State and local law enforcement authorities to collect DNA samples from individuals who are arrested for a crime of violence, an attempted crime of violence, a burglary, or an attempted burglary.

Maryland Code (2003, 2011 Repl.Vol.), Pub. Safety Art., § 2-504(a)(3)."). The State argues that we should decline to reach the constitutional questions raised by Corbin because of the independent source doctrine. After leaving his DNA on the testing straw, Corbin pleaded guilty to and was convicted of second-degree rape, which required him to provide a DNA sample for a Maryland database pursuant to Maryland Code (2003, 2011 Repl.Vol.), Section 2-504(a) of the Public Safety Article.

Thus, the State argues that "[e]ven without testing the straw, the police would have obtained Corbin's DNA[.]" Because of our holding, however, we need not address this argument.. Corbin was also charged with first- and second-degree rape, but the State entered a nolle prosequi to those counts.. Corbin's agreement to the terms of his probation order included consent to the regular alcohol monitoring/testing, but it cannot be said to be a waiver of all of his Fourth Amendment rights with respect to such testing.

See *United States v. Knights*, 534 U.S. 112, 118, 122 S.Ct. 587, 591, 151 L.Ed.2d 497 (2001) (leaving unanswered the question of whether a probationer waives all Fourth Amendment rights pursuant to a search condition of his probation).. This principle was articulated by Justice Harlan in his concurring opinion in *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct.

507, 516, *50019 L.Ed.2d 576 (1967) (Harlan, J., concurring), and adopted by this Court in *Venner v. State*, 279 Md. 47, 51-52, 59, 367 A.2d 949, 952, 956 (1977).. Here, the record does not contain Corbin's probation order, but it is undisputed that mandatory alcohol testing was a part of his probation..

The Court held that the search of Petitioner's home, based on reasonable suspicion, was acceptable because, under the terms of his proba*503tion, "the balance of [policy] considerations requires no more than reasonable suspicion" to conduct such a search. *Id.* at 121, 122 S.Ct. at 592.

We do not take on the question of whether the rule in *Samson v. California*, 547 U.S. 843, 846, 126 S.Ct. 2193, 2196, 165 L.Ed.2d 250 (2006), allowing searches of parolees, could be applied to a probationer.. In his affidavit in support of the eventual search warrant for Corbin's person, McCauley mentioned having received DNA samples from nine men. During the suppression hearing, he said "there were approximately twelve..".

The Application/Affidavit for a Search Warrant that McCauley prepared after he received Corbin's DNA sets forth many of the suspicious facts that he had learned, as stated above.. To be sure, a probationer convicted of a lesser misdemeanor carrying a minimal prison sentence might be

viewed differently.. Corbin alerts us to the possibility that such advances could make discoverable ever-broader information about an individual's medical condition, familial connections, race, ethnicity, and gender..

Although the Davis court found a constitutional violation, it did not suppress the evidence, reasoning that the deterrent effect on police *512misconduct, to be achieved by suppression, was outweighed by the costs of suppressing "powerfully inculpatory and reliable DNA evidence." *United States v. Davis*, 657 F.Supp.2d 630, 666 (D.Md.2009) ("The marginal deterrence that might be achieved by suppression of the evidence in this case — potentially preventing police from placing DNA profiles obtained from those with undiminished privacy expectations in their genetic information (already a rare occurrence) into law enforcement databases — simply cannot justify keeping the DNA evidence from the jury and disrupting the truth-seeking function of a criminal trial.")..

Corbin was convicted of involuntary manslaughter. "In Maryland, involuntary manslaughter is a common law felony, generally defined as an unintentional killing done without malice, in negligently doing some act lawful in itself or by the negligent omission to perform a legal duty." See *State v. Kanavy*, 416 Md. 1, 10, 4 A.3d 991, 996 (2010) (citations omitted); *State v. Albrecht*, 336 Md. 475, 499, 649 A.2d 336, 347 (1994); see also *State v. Pagotto*, 361 Md. 528, 548, 762 A.2d 97, 107-08 (2000) ("Involuntary manslaughter is a common law felony in Maryland.

It is defined as an unintentional killing done without malice, (1) by doing some unlawful act endangering life but which does not amount to a felony, or (2) in negligently doing some act lawful in itself, or (3) by the negligent omission to perform a legal duty." (citation omitted)). Corbin does not explicitly challenge the sufficiency of the evidence on the *514common-law elements of the crime, but instead attacks the trial court's conclusion that he was present when the victim died.