NO. _____

In the Supreme Court of the United States

SCOTT R. WILLIAMS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of Pennsylvania, Middle District — Harrisburg Office

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fourth Amendment demands that warrants outline with sufficient particularity that which is to be seized and searched and also ordinarily prohibits warrantless seizures and searches. Here, law enforcement first obtained a John Doe DNA Warrant and Complaint that only included reference to genetic markers that are common to all humans, and failed to attach or reference an actual DNA profile. Decades later, after obtaining a possible DNA match based on Petitioner's mother having provided her DNA to a private DNA genealogy company, police without a warrant obtained DNA from trash items outside Petitioner's home. Without a warrant, police then extracted the DNA and created a DNA profile. The Pennsylvania Superior Court, in a published decision, determined that the Doe DNA Warrant and Complaint's inclusion of generic markers common to all humans was sufficiently specific and particular and that no warrant was needed to extract and profile DNA obtained without a warrant. Both of these determinations are constitutionally unsound and present issues of first impression to this Court—issues that are likely to repeatedly occur in light of DNA advancements.

THE QUESTIONS PRESENTED ARE:

1. Whether the Fourth Amendment prohibits, under the specificity and particularity requirements, a John Doe DNA Complaint and Warrant that do not include a DNA profile, and include only genetic markers common to all humans;

2. Whether the Fourth Amendment prohibits the warrantless search, seizure, and extraction of DNA and the creation of DNA profiles from.

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- Scott Williams

Respondent and Prosecutor-Appellee below

- Commonwealth of Pennsylvania

LIST OF PROCEEDINGS

Supreme Court of Pennsylvania, Middle District

No. 449 Mal 2025

Commonwealth of Pennsylvania, *Respondent* v.
Scott R. Williams, *Petitioner*.

Order Denying Petition for Allowance of Appeal:
February 4, 2026

Superior Court of Pennsylvania, Harrisburg Office

NO. 544 MDA 2024 (2025 PA Super 159)

Commonwealth of Pennsylvania, *Appellee* v.
Scott R. Williams, *Appellant*.

Final Opinion: July 24, 2025

Common Pleas of Centre County, Pennsylvania,
Criminal Division

No. CP-14-CR-1169-2021

Commonwealth of Pennsylvania v.
Scott R. Williams, *Defendant*.

Judgment (Sentencing): March 25, 2024

Post-Judgment Opinion: May 10, 2024

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PETITION FOR A WRIT OF CERTIORARI

Scott A. Williams respectfully petitions for a writ of certiorari to review the judgment of the Pennsylvania Superior Court, Harrisburg Office.

OPINIONS BELOW

The Pennsylvania Superior Court, Harrisburg Office Opinion, filed on July 24, 2025, is attached at App.2a and can be found at *Commonwealth v. Williams*, 342 A.3d 742 (Pa. Super. 2025). The Court of Common Pleas of Centre County Trial Court Verdict, Sentencing Orders, and Post-Judgment Opinion are attached at App.81a, 75a, 78a, and 71a. The Pennsylvania Supreme Court's denial of allowance of appeal, dated February 4, 2026, is attached at App.1a.

JURISDICTION

The Pennsylvania Supreme Court's denied a petition for allowance of appeal on February 4, 2026. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

> 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. Am. IV. § 1, in relevant part

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

A. Factual Background

On May 13, 1995, T.L. was found in the middle of a street beaten, incoherent, and partially clothed in State College, Pennsylvania. Police were called and T.L. was hospitalized. (App.3a, App.84a). A sexual assault examination was performed, and two sets of vaginal swabs were obtained.

Around May 16, 1995, Detective Thomas Jordan provided evidence from the sexual assault examin-

ation to the FBI and requested that it be analyzed. (App.86a). Through that analysis, semen was detected, and the samples were sent to the F.B.I.'s DNA section for analysis. (App.86a). At that time, the FBI utilized Restriction Fragment Length Polymorphism ("RFLP") testing. (App.86a). Forensic examiner Melissa Smrz performed a DNA analysis and generated a report dated January 2, 1996. That report reflected that "[s]emen was identified on specimens Q1, Q2 and Q5." (App.676a). The report states that DNA profiles "for genetic loci D2S44, D17S79, D1S7, D4S139, D10S28, and D5S110 were developed from HAE III digested high molecular weight DNA extracted from specimens Q1/Q2 (combined for analysis), Q5, and K1." (App.676a).

Detective Jordan sent a letter to the F.B.I., on September 8, 1999, asking for the "DNA prints" to be entered into CODIS. (App.88a, App.677a). To toll the statute of limitations, Jordan filed a John Doe DNA complaint. (App.655a). Specifically, on or about March 29, 2000, a criminal complaint ("Original Complaint") and affidavit of probable cause ("Affidavit") (collectively, the "Doe DNA Complaint") were filed against "John Doe, Unknown Male with Matching Deoxyribonucleic Acid (DNA) Profile developed at Genetic Locations D2S44, D17S79, D17S, D4S139, D10S28 and D5S110." (App.89a, App.656a). An arrest warrant was also issued that named the accused as "Jon Doe Unknown Male DNA Profile at D2S44, D17279 D17S D4S139 D10S28 D5S110" (the "Warrant"). (App.89a, App.656a). The Doe DNA Complaint accused "John Doe, Male with Matching DNA Profile developed at Genetic Locations D2S44, D17S79, D1S7, D4S139, D10S28, D5S110" of committing rape, aggravated assault, and other offenses on May 13, 1995. (App.656a-658a).

Jordan retired in 2002. After Jordan retired, Detective Ralph Ralston was assigned T.L.'s case. (App.91a). Ralston learned that T.L. had a boyfriend at the time of this assault. Ralston believed that nobody spoke with him. (App.91a). Ralston confirmed with T.L. that it was possible that she had consensual sex a day or two prior to the assault; hence, it was possible that the DNA recovered could be the boyfriend's. (App.91a). A blood sample was obtained from the former boyfriend and provided to the F.B.I. (App.91a-92a).

Ralston also provided to the F,B.I. the original Q1/Q2 and Q5 specimens for testing utilizing the Short Tandem Repeat ("STR") procedure so that an STR profile could be developed and entered into CODIS. (App.680a). Ralston learned that STR was the standard in 2002 and that CODIS was transitioning from RFLP to STR profiling.

Via letter dated January 21, 2004, the F.B.I. provided Ralston with the results of the DNA examination and the STR profile of Q1/Q2. (App.92a, App.683a). The report excluded the boyfriend as the source of the semen. (App.92a, App.685a). The report also stated that the STR profile from Q1-Q2M will be entered into CODIS. As suggested by the F.B.I., a new blood sample was obtained from T.L. for STR analysis.

Ralston retired in August 2016. Prior to retiring, Ralston did not amend the Doe DNA Complaint, the Warrant, or reissue the Warrant to include the STR profile provided by the F.B.I. on January 21, 2004. From

2008 through 2019, the Commonwealth undertook no meaningful investigation.[1]

Detective Steven Bosak took over the investigation in early 2019. (App.92a). At some point Bosak decided to investigate T.L's case through genetic genealogy. Bosak contacted a private genetic genealogy laboratory, Parabon Nanolabs. (App.92a-93a). On September 14, 2020, Bosak provided DNA samples to DNA Solutions, a private lab that worked with Parabon. After DNA Solutions completes its analysis, Parabon analyzes the samples and uploads the profile into "GED Match" and "Family Tree DNA." (App.93a).

Parabon completed an initial report on November 23, 2020, that provided "information about percentages as to what they think the person's characteristics are[,]" such as skin color, hair darkness, eye color, freckles "with possibilities for the suspect in terms of those characteristics." (App.720a). Bosak received another report from Parabon in December 2020, which he characterized as their "first genetic genealogy report from the case." This report listed classifications of relationships that potentially share DNA with the recovered specimen. (App.740a-743a). It included a chart showing the possible family tree of the suspect. (App.748a). Bosak asked Parabon for names of individuals associated with the information in that report. (App.93a-94a).

As a result of the Parabon report, Bosak and Detective Nicole Eckley spoke with Wanda Williams—Petitioner's mother. Wanda Williams provided a buccal sample. (App.94a). They also obtained additional infor-

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[1] Ralston testified that, between 2008 and his retirement in August 2016, "nothing" was done, and they were "[j]ust relying on the STR profile in CODIS to reveal a hit."

mation from her concerning her family, including that she had three children, including Petitioner. (App.94a). Wanda Williams' buccal sample was sent to DNA Solutions around January 2021. DNA Solutions produced a "Certificate of Analysis," dated February 4, 2021.

Bosak and Eckley then began to investigate Scott Williams. Through Facebook posts, they learned that Williams' then-minor son, Z.W., was a football player and that there was going to be a football banquet. (App.94a). To surreptitiously recover DNA without a warrant, police went to the banquet on February 21, 2021, disguised as custodial staff. (App.95a, App.384a-385a). Without any suspicion that Z.W. was engaged in criminal activity, investigators seized eating utensils, a napkin and a plate used by Z.W. for the purpose of extracting a DNA profile. (App.95a, App.385a). They also collected items that Williams touched and swabbed them for DNA.

The items used by Z.W. were submitted to DNA Solutions. (App.388a, App.425a) DNA Solutions prepared a "Certificate of Analysis," dated April 5, 2021. (App.780a). Over objection, Bosak testified that the report indicated that Z.W. was the son of the suspect. (App.388a-389a).

On June 2, 2021, Bosak and others worked with the trash collector to seize trash bags collected from Williams' residence. (App.390a). Bosak testified that they "collected items in the trash that we felt would have probable DNA on them." (App.392a). They found six bottles containing chew spit, which they felt "would be a great source of DNA since he [Williams] spit into these bottles with tobacco." One bottle was sent to the FBI and another was sent to DNA Solutions. (App.393a).

DNA Solutions subsequently prepared a "Certificate of Analysis" dated July 21, 2021. (App.802a). Bosak subsequently received the F.B.I.'s analysis of the chew spit. The reports, which were presented over objection, concluded that the DNA profile from Q1-Q2 matched Williams' profile. (App.396a). The reports also set forth the statistical random match probability for the same.

B. Procedural History

On October 4, 2021, the Commonwealth filed an Omnibus Motion Concerning *Commonwealth v. John Doe*, Magisterial District No. 49-1-01, Docket No. CR-193-2000, averring that it identified Williams as the perpetrator of the 1995 incident and requesting to amend the caption of the Doe DNA Complaint to identify the defendant as "Scott R. Williams." (App.95a). A warrant for Williams' arrest was also requested and issued. Williams was arrested on October 5, 2021. A criminal information (the "Information") was filed on November 29, 2021, charging Williams with the offenses included in the Doe DNA Complaint. (App.95a-96a).

Williams filed an Omnibus Pre-Trial Motion to Suppress. (App.128a). Pertinent here, Williams argued 1) the Doe DNA Complaint and Warrant did not satisfy the specific and particularity requirements of the Fourth Amendment and 2) that the warrantless seizure, search, extraction and profiling of Williams' and his son's DNA infringed his constitutional rights. Hearings were held on four separate dates. Following briefing, on October 6, 2023, the trial court issued an

Opinion and Order granting in part and denying in part the Motion. (App.82a-127a).[2]

Following a stipulated bench trial on February 8, 2024, the trial court found Williams guilty of rape and aggravated assault; the remaining counts were *nolle prossed*. (App.72a). The trial court sentenced Williams on March 25, 2024, to an aggregate term of incarceration of 10-20 years. (App.66a-71a; *see also* App.18a).

Williams filed a timely notice of appeal on April 5, 2024. (App.18a). On July 24, 2025, in a published opinion, a panel of the Superior Court affirmed. (App.2a). A timely Petition for Allowance of Appeal followed. The Pennsylvania Supreme Court denied allowance of appeal on February 4, 2026. (App.1a).

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[2] On October 19, 2023, Williams filed an Application to Amend Order to Include the Statement as Specified in 42 Pa.C.S. § 702(b) to allow for an interlocutory appeal. On November 9, 2023, the trial court granted that application. Williams timely filed a Petition for Permission to Appeal Pursuant to Pa.R.A.P. 1311 and 1312. Williams requested interlocutory review of the issue pertaining to the validity of the Doe DNA Complaint and Warrant. The Superior Court of Pennsylvania denied the Petition on February 7, 2024.

REASONS FOR GRANTING THE PETITION

I. The Fourth Amendment Prohibits, Under the Specificity and Particularity Requirements, a John Doe DNA Complaint and Warrant That Do Not Include a DNA Profile, and Include Only Genetic Markers Common to All Humans

Neither the text and history of the Fourth Amendment nor Supreme Court case law support finding that the Fourth Amendment authorizes law enforcement to not only issue a John Doe arrest warrant (which applies to every human on the planet), but also to warrantlessly seize and extract DNA and create a profile so long as an item with DNA was located outside a persons' home. This dangerous "Brave New World" is no longer the world of science fiction. As this Court stated over a century ago, "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Boyd v. United States*, 116 U.S. 616, 635 (1886). This Court should grant review.

The Doe DNA Complaint and Warrant here did not identify any specific individual. Instead, it referenced loci common to every human being. Specifically, the Affidavit noted that DNA profiles were developed at loci D2S44, D17S79, D1S7, D4S139, D10S28, and D5S110 from specimens Q1, Q2 and Q5 and were maintained in CODIS, and that "the unnamed person involved in the sexual assault of [T.L.] can be expected to have a DNA profile that matches the foreign DNA profile from the semen taken from the vaginal and

genital swabs taken from [T.L.] on 05/13/1995." (App. 664a-665a).

D2S44, D17S79, D1S7, D4S139, D10S28 and D5S110, however, are markers, or loci, *i.e.*, locations, on the DNA chromosomes. These six loci "are found in every human-being." (App.553a). These markers do not reference an actual DNA profile but reference only the location on the chromosome at which a profile can be developed. It is the profile that is developed at each locus, and not the locus, which provides the information that can be used for forensic analysis. Commonwealth expert Mitchell Holland testified, " . . . I can tell the difference between individuals based on the profile." (App.445a).

While the Doe DNA Complaint and Warrant referenced the generic six loci, and the Affidavit stated that the profiles were maintained in CODIS, the DNA profiles were not included or attached to the Doe DNA Complaint or Warrant. (App.10a, App.90a). Moreover, none of the charging documents included either: (a) the range of statistical probabilities for a single-source, six-loci RFLP profile consistent with the six loci at which a profile was developed; or (b) the statistical probability that a person *other than* the major contributor of the collected sample would have the six-loci RFLP profile associated with the DNA collected at the crime scene. (App.10a, App.90a).

That is, the charging documents did not identify the statistical probability that the DNA profile that was developed but not included could be associated with someone other than the perpetrator. Indeed, prior to filing the Doe DNA Complaint, this analysis was not performed. In short, the Doe DNA Complaint and Warrant did not describe the accused at all.

Although the Panel acknowledged that no DNA profile was actually attached to either the Doe DNA Complaint or Warrant, and that no statistical probabilities were included, the Panel asserted that "warrants 'should not be invalidated by hypertechnical interpretations.'" (App.28a). But the fact that the Doe DNA Complaint and Warrant failed to describe with particularity and specificity the accused by failing to attach the actual DNA profile or at least the computer-generated restrictive fragment lengths is not a "hypertechnicality." Rather, describing the accused with particularity is a constitutional requirement under the Fourth Amendment.[3]

Instantly, the Pennsylvania court's published decision validates a John Doe DNA Complaint that describes no one and wholly undermines the specificity and particularity requirements of the Fourth Amendment by creating a standard for assessing the constitutional validity of John Doe DNA Complaints and Warrants that is untethered from the original meaning of particularity and specificity.

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[3] In addition, the Pennsylvania Superior Court looked beyond the four corners of the Doe DNA Complaint and Warrant in upholding the validity of the Doe DNA Complaint and Warrant and referenced testimony provided at the hearings on the Omnibus Motion concerning the statistical probability that the DNA profile recovered in 1995 could belong to someone other than the perpetrator. Williams objected to this testimony pre-hearing and during the hearing, as consideration of the same was improper since no statistical probabilities were included in the Doe DNA Complaint or Warrant. Insofar as the Doe DNA Complaint and Warrant did not include any reference to such statistical probabilities, it was improper for the Panel to base its analysis on that testimony.

Identifying the accused by generic DNA markers provides no information concerning the accused that puts either the accused or law enforcement on notice that any specific individual is the subject of a criminal complaint or warrant, that allows either law enforcement or the suspect to be notified of the pending criminal charges, or provides sufficient information to law enforcement that would allow it to identify and arrest the accused, on site. *United States v. Doe*, 703 F.2d 745, 750 (3rd Cir. 1983); (*see also* App.29a) (Superior Court acknowledging "Investigators could not arrest any individual pursuant to a John Doe DNA warrant unless they submitted a DNA sample to the FBI laboratory to confirm whether it matched the DNA profile of the perpetrator.").

The Doe DNA Complaint and Warrant were so meaningless that, in "reissued" warrants, the DNA markers were dropped from the description of the "John Doe" on the Warrant, and the accused was identified as "Jon Doe Unknown Male DNA Profile." Moreover, despite obtaining the STR DNA profile in 2004, police did not amend the Doe DNA Complaint or Warrant to include the STR profile. The police could have attached the actual DNA profile, but did not. *Cf. State v. Burdick*, 395 S.W.3d 120, 123 (Tenn. 2012) (upholding Doe DNA warrant because the "affidavit of complaint" included the detailed DNA profile by attaching it.).

The State Court's position that, inclusion of the generic markers with a reference that a profile was developed at those loci and that the profile is maintained in CODIS was sufficient, is akin to arguing that a complaint that describes the accused as "John Doe who matches the description of the assailant as

described by the accuser which is set forth in the police report that is located in a file at the department" is somehow constitutionally sufficient; clearly, it is not.

Boiled down, the Doe DNA Complaint and Warrant state that semen was recovered from the victim; that DNA was found, a profile was created and is in the possession of the F.B.I.; and that the profile will match someone—and that someone is the person who attacked the victim. This describes no one. The tautological averments in the Doe DNA Complaint and Warrant fail to satisfy Fourth Amendment specificity requirements.

As noted, the Doe DNA Complaint and Warrant also failed to include available statistical assessments setting forth the maximum or minimum expected frequency of a six-locus profile in the population at the six loci tested. *See e.g.*, *Washington v. Boughton*, 884 F.3d 692 (7th Cir. 2018) (upholding Doe DNA Complaint where the charging documents included the statistical probability that the recovered semen was someone other than the perpetrator). This analysis provides the statistical probability as to the number of individuals in the referenced population that could have the profile developed at the loci that were analyzed. Since the Doe DNA Complaint and Warrant did not include either the DNA profile or the statistical probability that such profile could belong to someone other than the perpetrator, the charging documents are scientifically meaningless.

Although an issue of first impression for this Court, other jurisdictions have addressed the validity of Doe DNA complaints and warrants. The outcomes were dependent on the attachment of the DNA profile and statistical probability included with the charging

documents. The most analogous case is *State v. Belt*, 179 P.3d 443 (Kan. 2008), which resulted in a finding that the warrant was insufficiently specific. *Belt* involved seven sexual assaults. Six separate complaints and affidavits were filed, one involving two victims. Four complaints and warrants identified the accused as a "John Doe described by deoxyribonucleic (DNA) analysis at LOCI D2S44 and D17S79." The supporting affidavits stated that semen was sent to the FBI for analysis, and that the FBI reported that "the semen donor's DNA LOCI is D2S44 and D17S79" and that "the DNA description would be unique only to the person committing the rape/sodomy against the applicable victim." *Belt*, 179 P.3d at 444-416.

The fifth complaint involved two victims and "identified 'John Doe, D2S44, D10S28, D1S7, D4S139' as its subject, and an arrest warrant was issued." *Id.* at 446. The supporting affidavit stated, "that the DNA description would be unique to the person who committed the rapes of P.B. and J.B." *Id.* The sixth John Doe complaint "averred that semen was obtained from the crime scene . . . and that the DNA description maintained at the FBI lab would be unique to the person who committed the rape of J.T." *Id.* at 447. The DNA loci referenced in the *Belt* cases (and listed in the Doe DNA Complaint and Warrant here) are common to *all* humans. *Id.* at 449.

The *Belt* Court concluded that the Doe complaints and affidavits failed to meet the specificity and particularity requirement of the Fourth Amendment because "neither the John Doe warrants nor the affidavits supporting them set forth the unique DNA profile of their subject." *Id.* at 450. It added, "there was no reason the State could not have particularly described the

perpetrator's unique DNA profile in the warrants or their supporting affidavits. The unique profile was known and could have been set out." *Id.*

In *State v. Police*, 273 A.3d 211 (Conn. 2022), the Connecticut Supreme Court held a Doe arrest warrant utilizing a DNA profile inadequate under the Fourth Amendment. According to the Court:

> to satisfy the particularity requirement of the fourth amendment, the affidavit accompanying a John Doe DNA arrest warrant application must contain information assuring the judicial authority issuing the warrant that the DNA profile identifies the person responsible for the crime on the basis of his or her unique DNA profile and should include information as to the statistical rarity of that profile.

Id., p. 231; *See also* M. Chin et al. *Forensic DNA Evidence: Science and the Law* (2019) § 9.8, p. 9-11 ("Doe arrest warrant premised on the suspect's DNA profile should include . . . [t]he actual DNA alleles possessed by the perpetrator . . . on a locus-by-locus basis . . . [and] [t]he rarity of the perpetrator's DNA profile should be expressed statistically on the face of the warrant, as well as the warrant affidavit, to establish the particularity of the identification and assure the magistrate that there will be no discretion on the part of law enforcement in the execution of the warrant").

The *Police* Court found that the Doe warrant, which identified the suspect on the basis of a general physical description and several mixed partial DNA profiles but did not state the probability of a random

match of any of those profiles, failed to satisfy the Fourth Amendment's particularity requirement. *Id*., p. 215.

Belt and *Police*, as well as the instant case, are materially different from cases that have upheld Doe DNA warrants where the Doe complaint and/or warrant provided *the perpetrator's unique DNA profile and outlined the statistical rarity of the DNA profile*. For example, in *People v. Robinson*, 224 P.3d 55 (Cal. 2010), the California Supreme Court rejected a Fourth Amendment challenge to a Doe DNA warrant because the warrant therein described the "John Doe" by setting forth the *actual DNA profile* at thirteen loci tested.[4] The complaint also stated that the profile was unique, "occurring in approximately 1 in 21 sextillions of the Caucasian population, 1 in 650 quadrillion of the African American population, 1 in 420 sextillions of the Hispanic population." *Robinson*, at 62. *See also Boughton*, 884 F.3d at 699 (the complaint stated that "the probability of randomly selecting an unrelated individual whose DNA profile matches the DNA profiles developed from the semen samples was, at most, one in 130 billion.").

In *Burdick*, *supra*, the Tennessee Supreme Court upheld a Doe DNA warrant where the DNA profile was attached to the affidavit of complaint. *See also State v. Neese*, 366 P.3d 561, 565 (Az. Ct. App. 2016) ("There may be instances where a 'John Doe' indictment containing a less comprehensive recitation of genetic markers may not sufficiently describe the

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[4] The DNA methodology used in *Robinson* was the STR method. Because of the STR testing methodology, more loci are profiled than are profiled with RFLP testing.

defendant with reasonable certainty."); *State v. Carlson*, 845 N.W.2d 827, 829 (Minn. Ct. App. 2014) (Doe warrant based on DNA profile comprised of 15 different loci, which would occur in one in 10,450,000,000, 000,000,000 unrelated individuals).

Instantly, the State Court relied on the Seventh Circuit decision in *Boughton*, *supra*, but ignored that in *Boughton* the charging documents included a statistical probability based on the DNA profile—something completely absent here. However, there is no textual basis, historical support or constitutional case law that supports concluding that a Doe DNA warrant that merely lists generic DNA markers common to all humans is sufficiently specific and particular.

As this Court has never addressed DNA Doe warrants, which are more and more frequently being utilized throughout the country, and tautological warrant language that identifies no one and merely includes DNA markers common to the human race logically cannot be particular or specific, this Court should grant review.

II. The Fourth Amendment Requires a Warrant to Search, Seize and Extract a DNA Profile

Not only is a Doe DNA Warrant and Complaint that does not contain either a DNA profile or a statistical analysis/comparison grossly lacking in specificity, but this case also presents another important issue of first impression concerning the warrantless creation of a DNA profile—based on the tenuous "abandonment doctrine". Here, police obtained DNA from Williams' son and from trash outside Williams' home. The State Courts concluded that one has no reasonable expectation in their DNA or the DNA of their children; therefore,

the creation of a DNA profile does not require a warrant. Even assuming that the warrantless seizure of DNA from a person's child and a person's trash outside their residence is constitutionally permissible and would not cause the Framers of the Constitution to roll over in their graves, a warrant still is necessary to extract and create a DNA profile. To hold otherwise opens the door to untenable results.

The collection of DNA is a search. *Maryland v. King*, 569 U.S. 435 (2013). Relatedly, the creation of a DNA profile is a search for Fourth Amendment purposes. *United States v. Davis*, 690 F.3d 226, 246 (4th Cir. 2012) ("'the extraction of DNA and the creation of a DNA profile result in a sufficiently separate invasion of privacy that such acts must be considered a separate search under the Fourth Amendment even when there is no issue concerning the collection of the DNA sample.'"); *but see Raynor v. State*, 29 a.3d 617 (Md. Ct. Spec. App. 2011). Notably, conflicts between State Court decisions and federal circuit court decisions on federal questions is one ground for the grant of certiorari. Critically, *Raynor* relied on a misinterpretation of this Court's decision in *King*, *supra*, as the *Raynor* Court incorrectly read *King* as finding that creating a DNA profile is not a search. But the *King* majority never so held. As Professor Tracy Maclin has recognized, "*King* had no reason to address whether a search occurs when the police, without statutory authorization or guidelines, collect and analyze shed DNA samples for investigative purposes." Tracy Maclin, *Government Analysis of Shed DNA Is a Search under the Fourth Amendment*, 48 TEXAS TECH L. REV. 287, 295 (2015).

Here, the Pennsylvania Superior Court found that no warrant was required to extract and profile the DNA recovered from the chew spit and utensils, as the DNA had purportedly been "voluntarily abandoned." *See e.g.*, *California v. Greenwood*, 486 U.S. 35, 40 (1988). But that analysis misses the mark. There is a distinction between the seizure of items that were allegedly abandoned—and the subsequent search of those materials to create a DNA profile. The Fourth Amendment prohibits both unreasonable searches and seizures. Without making any such distinction, the State Court concluded that "individuals do not have an expectation of privacy in discarded genetic material[]" and that Williams "did not have an expectation of privacy in his saliva discovered inside of discarded spit bottles that were lawfully confiscated by police." (App.60a). The State appellate court also concluded that Williams did not have an expectation of privacy in the DNA of his minor son. *Id.*

No decisions from this Court specifically address whether a warrant is required to seize, search, extract, and profile DNA, for investigative purposes, recovered from an item involving an individual who has not been arrested for a crime. Moreover, no Supreme Court decision has previously applied the abandonment doctrine to DNA—and for good reason. That doctrine is ill-fitting for DNA as one does not simply *voluntarily* abandon or expose their DNA and a DNA profile—the latter of which is not even physically visible and requires sophisticated technology to analyze. In short, DNA, let alone a DNA profile, is not voluntarily abandoned in the traditional sense.

DNA can be derived from skin cells, hair, and saliva, which are *unavoidably* and *involuntarily* left

behind; a person cannot stop shedding DNA. As one author has outlined, a person can shed enough skin cells to almost cover a football field within minutes. Erin Murphy, *Inside the Cell: The Dark Side of Forensic DNA* 5 (2015). DNA also reveals deep personal information, much more so than a fingerprint. Indeed, in this case, Parabon completed a report that provided "information about percentages as to what they think the person's characteristics are[,]" such as skin color, hair darkness, eye color, freckles "with possibilities for the suspect in terms of those characteristics." In this respect, "unlike DNA, a fingerprint says nothing about the person's health, their propensity for particular disease, race and gender characteristics, and perhaps even propensity for certain conduct." *United States v. Kincade*, 379 F.3d 813, 842 n. 3 (9th Cir. 2004) (Gould, J., concurring).

Americans have a reasonable expectation of privacy in their genetic material. DNA can be used to identify ancestry, biological relationships, and the propensity to suffer certain medical conditions. Indeed, a "vast amount of sensitive information . . . can be mined from a person's DNA[.]" *United States v. Amerson*, 483 F.3d 73, 85 (2d Cir. 2007). It cannot be reasonably disputed that DNA extracted and seized provides the government with a huge swath of intimate information. *State v. Medina*, 102 A.3d 661, 691 (Vt. 2014) (DNA "provide[s] a massive amount of unique, private information about a person that goes beyond identification of that person").

It is difficult to conceive how a person would not retain a reasonable expectation of privacy in their DNA, even when it ends up in trash and/or is involuntarily shed. Pointedly, there is no viable option for a person to stop shedding DNA. And there is no limitation placed

on the use of such DNA profiles that are surreptitiously obtained from DNA that is collected separate and apart from a person who is convicted or arrested for a crime.

While some decisions have upheld warrantless extractions of DNA, those decisions are readily distinguishable. *Commonwealth v. Smith*, 164 A.3d 1255 (Pa. Super. 2017) (items seized *subsequent to the arrest* of the defendant pursuant to a search warrant); *Williamson v. State*, 993 A.2d 626 (Md. 2010) (DNA obtained from cup discarded by arrestee while in holding cell held not to violate Fourth Amendment); *Corbin v. State*, 52 A.3d 946 (Md. 2012) (DNA taken from saliva of probationer that was left on a straw during a required breath test held not to violate Fourth Amendment); *Pollard v. State*, 392 S.W. 3d 785 (Tex. App. 2012) (no Fourth Amendment violation in seizure of DNA left on cup and spoon in jail cell); *People v. Thomas*, 200 Cal.App. 4th 338 (2011) (saliva on police breath test device abandoned interest in DNA); *Commonwealth v. Cabral*, 866 N.E.2d 429 (Mass. App. Ct. 2007) (defendant who spit on public sidewalk had no privacy interest in saliva).

Williams was not in an interrogation room or police custody when he discarded the bottle with spit in his own trash; was not on probation and subject to a court-ordered breath tests; and did not discard his saliva in public or on a police device. Williams was not a felon, arrestee, parolee, or probationer, and had a reasonable privacy interest in his bodily integrity and genetic information. As this Court has recognized in a different setting, the Fourth Amendment is intended to restrain "police officers unbridled discretion to rummage at will among a person's private effects."

Arizona v. Gant, 556 U.S. 332, 345 (2009). Yet, under the reasoning of the State Court, police have unbridled discretion to create DNA profiles without a warrant—even using a person's child's DNA.

The consequences of permitting the government's actions in this matter eviscerates *any* protection in one's DNA so long as police can surreptitiously obtain a DNA sample from not only a suspect but a family member of that suspect. The doctrine of voluntary abandonment has no application to DNA profiling. Pursuant to the Fourth Amendment, a warrant was required to search, extract and create DNA profiles from the chew spit and utensils.

The Pennsylvania Superior Court's published decision authorizes the government to analyze "the DNA in anyone's saliva, however obtained, as long as it was not directly from the person's mouth, and use the information to construct a DNA database that includes both felons and nonfelons." *State v. Athan*, 158 P.3d 27, 49 (Wash. 2007) (Fairhurst, J. dissenting). Such Orwellian actions are inconsistent with both the text and spirit of the United States Constitution. As one judge aptly observed in *State v. Burns*, 988 N.W. 2d 352 (Iowa 2023):

> The potential power to assemble a DNA database of all Americans using "abandoned" DNA (in which the majority says you have no rights) to "improve both the criminal justice system and police investigative practices" should bring a shudder to the reader. (Quoting *King*, 569 U.S. at 442 (majority opinion).) If we have no legitimate expectation of privacy in the "bread-crumb trail of identifying DNA matter" we leave behind, "what possible

> impediment can there be to having the government collect what we leave behind, extract its DNA signature and enhance CODIS"—the national repository of criminal offenders' DNA profiles—"to include everyone?"

Id. at 397 (McDermott, J., dissenting).

A more reasonable and sounder path exists: the government cannot extract and create a DNA profile without a warrant supported by probable cause. That is the path already taken by this Court in the context of cell phone searches and urine/blood analysis.

This Court in *Riley v. California*, 573 U.S. 373 (2014), determined that the Fourth Amendment requires police to obtain a search warrant to power on a cell phone and search its contents even if the cell phone was lawfully seized. The expectation of privacy one has in their own DNA is far more compelling than that associated with the contents of a cell phone. Relatedly, in *Carpenter v. United States*, 585 U.S. 296 (2018), this Court concluded that cell phone location data was subject to Fourth Amendment protections because there is a legitimate expectation of privacy in such information.

There is a greater expectation of privacy in the information contained within one's DNA than a cell phone. Americans do not expect the government to be trolling their trash for DNA, let alone creating a DNA profile, or turning it over to other third parties after collecting it without a warrant and, ultimately, placing it into a national database. The warrantless extraction and profiling of the DNA seized here cannot be justified any more than can a warrantless search of a lawfully seized cellular phone.

This Court has also addressed an analogous area when discussing collection of blood, breath and urine samples to determine the presence of drugs or alcohol. In *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989), this Court concluded that obtaining such samples constituted a search. Importantly, the Court added that the "ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested employee's privacy interests." *Id.* at 616. It continued, "chemical analysis of urine, like that of blood, can reveal a host of private medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic." *Id.* at 617. If it is "clear that the collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable," *id.*, then so too must profiling DNA be "deemed searches under the Fourth Amendment." *Id.*[5]

This Court's decision in *King*, *supra.*, though not binding, is also instructive. *King* addressed whether a statute authorizing the collection of DNA from an arrestee for placement in CODIS violated the Fourth Amendment. *King*, 569 U.S. at 443-46. Although a five-justice majority found that the statute did not run afoul of the Fourth Amendment, it highlighted the distinction between an arrestee's lesser expectation of privacy and that of a non-arrestee. *Id.* at 462-63.

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[5] It should be noted that the railway employees in the *Skinner* case were deemed to have a reduced expectation of privacy because of the pervasive regulations of railroads for safety purposes. The average citizen has no such reduced expectation of privacy in his or her DNA and DNA profile.

Critical to the *King* majority's rationale was that the DNA analysis was being used for booking purposes to identify the arrestee, as opposed to using it for investigative purposes; it compared photographing and fingerprinting of arrestees to the collection of an arrestee's DNA. *Id*. at 461. Importantly, the Maryland statute prohibited searching the statewide DNA database for familial matches. *Id.* at 444.

Here, not only was a warrantless DNA profile extracted and created from chew spit found in William's trash, but DNA, without a warrant, was extracted and profiled from utensils used by Williams' son. Investigators were aware that the utensils were used by Z.W., and not by Williams. Unlike in *King*, law enforcement did not obtain either DNA profile to identify Williams, but rather to link the adult Williams to an unsolved crime.

In addition to concluding that Williams had no expectation of privacy in his own DNA, the State Court also found that Williams did not have an expectation of privacy in his minor son's DNA. (App.60a). This conclusion ignores the uniqueness of a parent and minor child's relationship, and that, where the child is a biological child, they share part of the same genetic blueprint. Williams has not found authority on this issue or any decision involving analogous facts. Nevertheless, because of the familial and unique relationship at issue, standing to assert this constitutional violation should be recognized.

"Refusing to permit standing would represent 'an open invitation to adopt such procedures as a standard method for the solution of particular crimes or for conducting generalized crime hunts.'" *Waring v. State*, 670 P.2d 357, 362 (Alaska 1983). Unlike those situations

where courts have declared that a person cannot vicariously assert the violation of another's constitutional rights, the seizure, search, and extraction of DNA of a child implicates the rights of a parent due to the unique nature of DNA. No reasonable person expects the government to create a DNA profile or database from the warrantless seizure and extraction of their children's DNA.

Society is prepared to recognize, justifiably and reasonably, that parents have a personal privacy interest in their children's DNA. Police investigative techniques which trample the rights of innocent third persons, *especially* those of children, should not be countenanced. As the legal guardian of his minor son, Williams had an interest in ensuring the rights of his children were not violated and infringed.

A warrant supported by probable cause was required to search, extract, and profile the DNA from the chew spit and from the utensils. This Court should grant review.

CONCLUSION

For the aforementioned reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 5, 2026