

Hypothetical Fact Pattern #1

The police are investigating a homicide in which the victim was stabbed to death. After forensic evaluation by the State Crime Lab, the detectives leading the investigation are informed that the clothes the victim was wearing also contain blood from a source other than the victim. Eyewitnesses reported seeing the victim engaged in a fist fight with an unidentified assailant. The witnesses described seeing the assailant pull out a knife after he was punched in the nose, knocking the victim to the ground and stabbing him multiple times in the chest before fleeing. Because of darkness, there are no good descriptions of the assailant other than that he appeared to be a male of average build. The police believe that a local man, Danny D, might have been the assailant but lack probable cause for a warrant. An undercover detective follows Danny into a local fast food restaurant. After Danny throws his drink cup into the trash and walks away, the detective secures the thrown away cup and submits it to the Crime Lab for DNA testing. DNA from the cup matches the blood from the source other than the victim found on the victim's clothes. Danny is charged with murder based upon this DNA match. Does this violate Danny's constitutional rights?

Hypothetical Fact Pattern #2

The cold case unit of the AG's office is investigating a thirty year old unsolved homicide in which the body of a 20 year old young woman was found in the woods, the victim of an apparent strangulation. The new investigation reveals DNA evidence from a source other than the victim. It does not match any of the people who the police suspected may have been involved and all of those people consented to having a DNA sample taken from them. The AG's office decides to request records from "23andMe" and another similar service in an effort to find the suspect who may have left the DNA evidence. Other than the DNA evidence, the police have no idea who may have committed the murder. The providers voluntarily turn over the records and the police determine the records show DNA consistent with that of a local handyman, Sam S, who moved from the area about a year after the homicide and has lived out of state for the past 29 years. The police arrest Sam for the murder. Sam moves to suppress citing an alleged violation of his constitutional rights. Does Sam win his motion to suppress the evidence gathered from 23andMe and the other service provider and the fruits of that evidence?