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State v. Querido, 229 A.3d 410 (R.I. 2020)

Kirsten E. Roy

Candidate for Juris Doctor, Roger Williams University School of Law

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Criminal Law and Procedure. *State v. Querido*, 229 A.3d 410 (R.I. 2020). Where there is a valid search warrant, DNA results of a buccal swab taken from the defendant should not be suppressed. If the defendant refuses to comply, the state is not required to return to court to seek a contempt order. Furthermore, if the defendant is given multiple opportunities to comply and refuses to do so, an officer's force is permitted if, given the totality of the circumstances, the force used was objectively reasonable.

FACTS AND TRAVEL

In July 2017, a grand jury indicted the defendant, Malcolm J. Querido, charging him with the murder of Robert Bullard, who died from multiple stab wounds on September 7, 2014.¹ At the crime scene, Providence Police Department (PPD) officers observed blood droplets on the stairs of a common hallway outside of the apartment building where the murder occurred.² The Rhode Island Department of Health (RIDOH) ran the blood samples through the Combined DNA Index System (CODIS) and determined that the DNA sample from the blood droplets matched that of the defendant.³ RIDOH requested a second sample from the defendant to confirm that the blood droplets found at the crime scene were from the defendant.⁴

On June 2, 2017, a criminal complaint against the defendant was filed and the defendant was subsequently held without bail at the Rhode Island Adult Correctional Institute (ACI).⁵ Initially, Detective Jason Simoneau of the PPD obtained a search warrant for the defendant's DNA using a "buccal swab," a common procedure for obtaining DNA samples.⁶ However, the defendant

1. *State v. Querido*, 229 A.3d 410, 412 (2020).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

refused to comply when an officer attempted to obtain a DNA sample pursuant to the search warrant issued.⁷

On June 21, 2017, Detective Simoneau returned to court and requested a second search warrant which would permit the defendant's DNA to be collected through either a buccal swab, blood sample, or the defendant's toothbrush.⁸ Detective Simoneau requested permission to obtain the defendant's DNA sample via buccal swab because the defendant had a brand new, unused toothbrush at the time the detective arrived at the ACI, and thus, the toothbrush would not produce a DNA sample.⁹

The events leading up to, and including, the seizure of the buccal swab were captured on two video recordings.¹⁰ The first video shows a correctional officer attempting to handcuff the defendant.¹¹ The defendant blocked his cell with a mattress and continued to refuse the seizure of a DNA sample.¹² The correctional officer released pepper spray into the defendant's cell and the defendant still refused to comply.¹³ Because the defendant was uncooperative, an extraction team of correctional officers was deployed to assist Detective Simoneau with the execution of the search warrant.¹⁴ A correctional officer approached the defendant's cell and gave the defendant a final opportunity to voluntarily comply with the search warrant.¹⁵

At this point, the defendant still refused the search warrant and the officers planned to forcibly extract the defendant from the cell and then restrain the defendant, permitting Detective Simoneau to obtain a DNA sample via buccal swab.¹⁶ Once the defendant was restrained, the defendant refused to open his mouth for the buccal swab.¹⁷ Finally, a correctional officer held the

7. *Id.*

8. *Id.* at 413.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

defendant's head back while the detective obtained the buccal swab.¹⁸ The DNA results of the buccal swab matched the DNA sample from CODIS, which also matched the blood samples from the crime scene.¹⁹ After admitting to violating probation on an unrelated felony conviction, the defendant was sentenced to four years at the ACI.²⁰

On July 10, 2017, the defendant was charged with the murder of Robert Bullard.²¹ In March 2018, the defendant filed a motion to suppress and a motion for an evidentiary hearing.²² On the night before trial, April 8, 2018, the defendant filed a motion to dismiss the indictment, alleging egregious government conduct relating to the murder investigation, including the seizure of the blood sample from the crime scene.²³ The defendant argued that the indictment should be dismissed because officers obtained the buccal swab through "physical coercion."²⁴

According to the trial justice, the video recording of the buccal swab was "one of the most disturbing clips [he] ha[d] seen in a long, long time."²⁵ The trial justice referred to the officers' conduct as unsettling, describing the officers' use of pepper spray, hazmat suits, and gas masks; the manner in which the officers removed the defendant from his cell; and the manner in which the officers obtained the buccal swab.²⁶ The trial justice referred to the officers' conduct as "unacceptable" and referenced the use of such force as "unnecessary."²⁷ As such, the trial justice suppressed the evidence and entered an order on April 11, 2018.²⁸

18. *Id.*
19. *Id.*
20. *Id.* at 414.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at 415.
28. *Id.*

ANALYSIS AND HOLDING

Upon review of the Superior Court order, the Rhode Island Supreme Court first sought to determine whether the State was required to return to the Superior Court and hold the defendant in contempt for refusal to comply with the search warrant, and whether the force used in executing the search warrant was excessive or “objectively reasonable” under the Fourth Amendment and the balancing test set forth by the United States Supreme Court in *Graham v. Connor*.²⁹

The Rhode Island Supreme Court concluded that the State was not required to ask the Superior Court to hold the defendant in contempt for his failure to comply with the search warrant because the United States favors the use of search warrants for the lawful seizure of evidence.³⁰ Here, the officers obtained a valid search warrant, which authorized a DNA sample via buccal swab, blood sample, or the defendant’s tooth brush.³¹ The Supreme Court reasoned that the search warrant authorized the seizure of evidence, specifically the defendant’s saliva or blood, that was within the court’s warrant authority.³² Further, the defendant did not have a right to refuse to comply with the search warrant.³³

The Supreme Court explained that if Rhode Island General Laws section 12-5-2 authorized the courts to issue search warrants for the seizure of a blood sample,³⁴ the police are authorized to seize that evidence involuntarily from a non-consenting defendant.³⁵ Notably, a court order for a blood sample from a defendant is distinguishable from a search warrant for a blood sample because the defendant can refuse to comply with a court order and would subsequently be held in contempt of the court.³⁶ With regard to a search warrant however, the defendant has no choice in the matter

29. *Id.* (citing *Graham v. Connor*, 490 U.S. 386 (1989)).

30. *Id.* at 416.

31. *Id.* at 416–17.

32. *Id.* at 416 (the Court relied on Rhode Island General Laws section 12-5-2 noting that the statute extended the warrant authority to include the seizure of “blood, saliva, hair, bodily tissues, bodily fluids, or dental impression”).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

and officers may seize evidence involuntarily from a defendant, and, if necessary, officers can use reasonable force to seize the evidence.³⁷ As such, the state did not need to ask the court to hold the defendant in contempt and was authorized to use reasonable force to obtain a DNA sample from the defendant.³⁸

Next, the Rhode Island Supreme Court considered whether the force used in executing the search warrant in this case was excessive or “objectively reasonable” under the Fourth Amendment and the balancing test set forth by the United States Supreme Court in *Graham v. Connor*.³⁹ The Fourth Amendment prohibits unreasonable searches and seizures.⁴⁰ *Graham* sets forth a balancing test, which applies to “all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard[.]”⁴¹ The test for a convicted prisoner, as set forth in *Hudson v. McMillian*, is governed by the Eighth Amendment standard of “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”⁴² Nonetheless, this case is governed by the *Graham* balancing test because when a claim of excessive force occurs when an officer is making a seizure of a person, the Fourth Amendment’s objective reasonableness standard applies.⁴³

Graham provides that a court must weigh “the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”⁴⁴ The court must consider the facts and circumstances of a given case, including “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting

37. *Id.*

38. *Id.*

39. *Id.* at 417.

40. *Id.* (citing *Maryland v. King*, 569 U.S. 435, 446 (2013)).

41. *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)).

42. *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992)).

43. *Id.*

44. *Id.* (quoting *Graham*, 490 U.S. at 396).

to evade arrest by flight.”⁴⁵ An officer’s force is reasonable if, given the totality of the circumstances, the force used was objectively reasonable.⁴⁶ Additionally the court must consider how a given intrusion “may threaten the health or safety of the individual.”⁴⁷ For example, in *Schmerber*, the United States Supreme Court has stated that a blood test is reasonable because it “does not threaten the health or safety of the individual” and the intrusion is not “unduly extensive.”⁴⁸ Furthermore, a buccal swab is far less intrusive than a blood test as it only requires a quick swab of the subject’s cheek.⁴⁹

In this case, the Court concluded that the use of force to collect the defendant’s DNA was minimally intrusive under the Fourth Amendment as the buccal swab did not pose a threat to the defendant’s health or safety, and the force was necessary because the defendant refused to comply with the two warrants.⁵⁰ Furthermore, the Court reasoned that the countervailing government interests in seizing the DNA sample from the defendant were significant and favored the State.⁵¹ First, the government has a strong interest in accurately determining whether the defendant is innocent or guilty and the type of evidence officers sought to obtain provides an accurate DNA result that would confirm if the defendant’s DNA sample matched the DNA found at the crime scene.⁵² Second, the government has a significant interest because the crime at issue was so severe.⁵³ Third, the defendant was a threat to the officers attempting to execute the search warrant for a DNA sample.⁵⁴ The search warrant even provided for a less intrusive method of obtaining a DNA sample to minimize safety concerns, but this effort was

45. *Id.* at 417–18 (quoting *Graham*, 490 U.S. at 396).

46. *Id.* at 418.

47. *Id.* (quoting *Maryland v. King*, 569 U.S. 435, 464 (2013)).

48. *Id.* (citing *Schmerber v. California*, 384 U.S. 757, 771 (1966)).

49. *Id.* (quoting *King*, 569 U.S. at 446).

50. *Id.*

51. *Id.* at 419.

52. *Id.*

53. *Id.*

54. *Id.*

ineffective as the defendant asked for a new toothbrush.⁵⁵ Lastly, the defendant refused to comply with two valid search warrants and actively resisted DNA buccal swap.⁵⁶ As such, the force the officers used to obtain a DNA sample was reasonable under the *Graham* balancing test as there were significant countervailing government interests at stake that outweigh the minimal intrusion on the defendant's Fourth Amendment rights.⁵⁷

COMMENTARY

The Rhode Island Supreme Court importantly distinguished how a defendant's refusal to comply with a valid search warrant is different than a defendant's refusal to comply with a court order.⁵⁸ With respect to the seizure of evidence based on a search warrant, the individual does not have a choice in the matter.⁵⁹ If the subject of a search warrant refuses to comply, officers may use reasonable force to seize the evidence.⁶⁰ In contrast, if the DNA sample here was court-ordered, the State would need to hold the defendant in contempt before proceeding.⁶¹ As such, the State here was not required to hold the defendant in contempt because Providence Police officers were executing a valid search warrant, the defendant did not have a right to refuse compliance with a search warrant, and involuntary seizure of the DNA sample through reasonable force was necessary given the defendant's uncooperative behavior.⁶²

Further, the Court acknowledged that the government's countervailing interests, when weighed against the defendant's Fourth Amendment interests, were objectively reasonable as applied to the *Graham* balancing test.⁶³ The Court noted that the government had significant countervailing interests and noted that a buccal swab, under normal circumstances, is a minimally

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 416.

59. *Id.*

60. *Id.*

61. *Id.* at 416–17.

62. *Id.*

63. *Id.* at 419.

intrusive seizure.⁶⁴ Force was necessary under these circumstances because the defendant repeatedly refused to comply with officers' efforts to seize a DNA sample via buccal swab, blood sample, or a toothbrush.⁶⁵ As such, the facts of the case warranted such unusual force because the defendant effectively prevented officers from taking a DNA sample. The use of force in this case was objectively reasonable given the substantial countervailing interests of the State, which substantially outweighed the minimal intrusion on the defendant's Fourth Amendment rights.⁶⁶

CONCLUSION

The Rhode Island Supreme Court held that the State was allowed to use reasonable force to seize a DNA sample from the defendant because such force was necessary given the defendant's refusal to comply and the force used in collecting a buccal swab from the defendant was objectively reasonable under the balancing test set forth in *Graham* because the state's countervailing interests outweighed the minimal intrusion on the defendant's Fourth Amendment rights.⁶⁷

Kirsten E. Roy

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*