

## Domestic Violence and the Officer Home Search Hassle

### Description

#### ***United States v. Gabriel Rodriguez-Pacheco, 948 F.3d 1 (1st Cir. 2020)***

Certainly, our response to domestic violence cases has evolved for the better in recent years and we continue to improve our services to Domestic Violence victims. That being said, we must still abide by constitutional guidelines during our investigations and the arrest of the offender. Today's case focuses on an appeal from the 1<sup>st</sup> Circuit Court, specifically coming out of Puerto Rico. While we do not focus on cases from Puerto Rico often, Puerto Rico falls within our federal court system and the 1st Circuit Court of Appeals. Cases decided by the 1st Circuit set precedent for other 1st Circuit states including Massachusetts, Maine, New Hampshire and Rhode Island.

In today's case the 1st Circuit is looking at whether officers had the requisite exigent circumstances to conduct a warrantless search of the arrested party's home in order to retrieve a handgun. To add one last curve ball to this case, the arrested party was an active police officer and the firearm in question was his issued sidearm.

### FACTS

The victim approached an officer from the Domestic Violence Division and informed him that she was being threatened by another police officer (Rodriguez). The victim claimed she was involved in a relationship with Officer Rodriguez but had cut it off. Rodriguez was now sending her threatening text messages and video footage of sexual encounters between Rodriguez and the victim. Rodriguez threatened to release the videos on the internet if the victim did not rekindle the relationship.

Following an investigation, officers found Rodriguez living at his mother's house and placed him under arrest. When asked, Rodriguez claimed his service weapon was in the house and turned to retrieve it. The exchange went as follows:

*I asked him, "where is your weapon?" He said, "It's in my bedroom. I'll come right back, and I'll go fetch it." Immediately I told him, "No, I'll go with you. You tell me where the weapon is, and I'll seek it." To which he answered me, "Okay, no problem." He made a gesture with his hand and said, "follow me."*

Rodriguez and the officers entered Rodriguez's bedroom and the officers retrieved the weapon. At the same time the officers retrieved a laptop computer, GoPro camera and a cell phone, all suspected to contain possible evidence.

During the interaction at the house Rodriguez was not handcuffed, there was no sweep of the bedroom or house for other suspects and officers referred to Rodriguez and his family as "cooperative and decent people".

Rodriguez was arrested and officers obtained a search warrant for the electronic equipment seized at the house. The search uncovered video footage of sexual encounters with the victim and a number of

female minors. Rodriguez was indicted and filed a motion to suppress the digital evidence, claiming that the electronics were improperly seized. The prosecution argued that the evidence should be allowed based on two theories: first, that the items were properly seized based on exigent circumstance, and second, that Rodriguez gave the officers permission to enter the premises. The district court denied the motion, finding that the officers properly seized the devices based on exigent circumstances.

This appeal followed.

## **FIRST CIRCUIT FINDINGS**

On appeal, Rodriguez claimed that there were no exigent circumstances present to support the seizure of the devices and the 1st Circuit Court agreed. The Court then noted a number of factors that cut into the government's exigency argument:

- Rodriguez was unarmed at the time of his arrest, he was cooperative and there was no danger to the officers or public; and
- The weapon in question was not evidence nor was it used during the commission of a crime.

The court determined that “the fact that the officers knew a gun was in the house, without more, is not sufficient under our precedent to demonstrate exigent circumstances.”

But that was not the end of the discussion. At the district court the prosecution argued two theories to allow the evidence, exigency and consent. However, once the district court found exigent circumstances, they did not address the issue of consent.

The Circuit Court sent the case back to the trial court to review the original motion and determine whether Rodriguez gave officers consent to enter the house with him.

## **TAKEAWAYS**

This case will now head back to the trial court to determine the issue of consent. But this case is a good example that officers often have various ways to conduct a warrantless search or, more importantly, have an opportunity to seek a search warrant. Obviously, taking the time to obtain the search warrant will prevent the kinds of problems seen in this case.

There is also a second issue in this case that bears review; it appears from the facts of this case that officers were looking to secure the department issued firearm in accordance with an agency directive that required officers to secure an officer's department issued firearm when an arrest is made. The court was quick to point out that in this case fulfilling an administrative policy cannot form the basis for a warrantless search based on exigency. This is the one time that we at DLG would advise against following a directive from your agency. Here, good search and seizure practice should take precedent over the directive, as the court pointed out. It is important to note that following a policy may not always hold up with your argument in court.

## **Date Created**

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