

SUPREME COURT OF CONNECTICUT

State v. Marrero-Alejandro, 324 Conn. 780

154 A.3d 1005 (2017) · No. SC 19559 · Decided March 14, 2017

SUMMARY

The Connecticut Supreme Court dismissed the defendant’s appeal as improvidently granted. The court reformulated the certified question concerning an unpreserved challenge to the admission of DNA evidence from a buccal swab taken after the defendant invoked his right to counsel, but did not reach the merits.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Rogers, C. J.; Palmer, J.; Eveleigh, J.; McDonald, J.; Espinosa, J.; Robinson, J.
JURISDICTION	Connecticut
DECIDED	March 14, 2017
DOCKET	SC 19559
DISPOSITION	dismissed
PROCEDURAL POSTURE	Certified appeal from the Appellate Court's affirmance of the defendant's murder conviction and sentence; the Supreme Court dismissed the appeal as improvidently certified.
STANDARD OF REVIEW	The Supreme Court examined the appellate record, briefs, and oral arguments to determine whether certification had been improvidently granted.
PRECEDENTIAL VALUE	published
PARTIES	Gilberto O. Marrero-Alejandro v. State of Connecticut

TOPICS

- appellate procedure
- preservation of error
- criminal procedure
- suppression of evidence
- right to counsel

PRACTICE AREAS

- criminal procedure
- appellate procedure
- constitutional law
- evidence

QUESTIONS PRESENTED

1. Whether the certified question accurately stated the issue actually presented and decided on appeal.
2. Whether the appeal should be dismissed because certification had been improvidently granted after the defendant failed to challenge the Appellate Court's conclusion that the buccal-swab challenge was unpreserved.

HOLDINGS

1. The certified question was reformulated to address whether the Appellate Court properly concluded that the defendant's unpreserved challenge to admission of the buccal-swab evidence did not present a question of constitutional magnitude.
2. The appeal was dismissed because certification had been improvidently granted.

KEY QUOTATIONS

"After examining the entire record on appeal and considering the briefs and oral arguments of the parties, we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted." (154 A.3d 1005)

FACTUAL BACKGROUND

The defendant was convicted of murder arising from a 2010 shooting in Bristol. The challenged evidence consisted of DNA obtained from a buccal swab taken after the defendant had invoked his right to counsel. At trial, however, defense counsel informed the court that the motion to suppress was not directed at the buccal swab.

PROCEDURAL HISTORY

Following a jury trial, the defendant was convicted of murder and sentenced to sixty years of imprisonment. The Appellate Court affirmed, concluding that the defendant's challenge to the admission of DNA evidence from a buccal swab was unpreserved and did not satisfy the constitutional-magnitude requirement for review under *State v. Golding*. The Supreme Court granted certification but reformulated the certified question because the defendant did not challenge the Appellate Court's preservation ruling, and then dismissed the appeal as improvidently granted.

DISPOSITION

dismissed

CASES CITED

- *State v. Marrero-Alejandro*, 159 Conn. App. 376, 396-398, 122 A.3d 272 (2015)
- *State v. Golding*, 213 Conn. 233, 239-240, 567 A.2d 823 (1989)
- *State v. Ouellette*, 295 Conn. 173, 184, 989 A.2d 1048 (2010)
- *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005)

OPINION

State v. Marrero-Alejandro 154 A.3d 1005

PER CURIAM.

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***** STATE OF CONNECTICUT
v. GILBERTO O.

MARRERO-ALEJANDRO

(SC 19559) Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa and Robinson, Js. Argued December 13, 2016—officially released March 14, 2017 James B. Streeto, senior assistant public defender, for the appellant (defendant). Rocco A. Chiarenza, assistant state’s attorney, with whom, on the brief, were Brian Preleski, state’s attorney, and John H. Malone, supervisory assistant state’s attorney, for the appellee (state). Opinion PER CURIAM. Following a jury trial, the defendant, Gilberto O. Marrero-Alejandro, was convicted of murder in violation of General Statutes (Rev. to 2009) § 53a-54a in connection with a shooting in Bristol in 2010. He was sentenced to a term of sixty years imprisonment. The defendant appealed from the judgment of the trial court to the Appellate Court, claiming, among other things, that the trial court improperly had failed to suppress certain DNA evidence obtained from a buccal swab of the defendant because the swab was taken after he had invoked his right to counsel. State v. Marrero-Alejandro, 159 Conn. App. 376, 396, 122 A.3d 272 (2015). The Appellate Court affirmed the judgment of the trial court, holding, inter alia, that the defendant’s claim was unreviewable because (1) it was not preserved at trial, and (2) it failed to satisfy the second prong of State v. Golding, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). State v. Marrero-Alejandro, supra, 397–98. In determining that the claim was not of constitutional magnitude as required for Golding review, the Appellate Court reasoned that, because the buccal swab was not testimonial evidence, neither the fifth

amendment to the federal constitution nor article first, § 8, of the Connecticut constitution was implicated as those provisions apply only to testimonial evidence. *Id.* Thereafter, this court granted the defendant's petition for certification limited to the following issue: "Did the Appellate Court properly uphold the trial court's denial of the defendant's motion to suppress DNA evidence obtained from a buccal swab taken after he invoked his right to counsel?" *State v. Marrero-Alejandro*, 319 Conn. 934, 125 A.3d 207 (2015). Our review of the record makes it apparent that this certified question does not reflect a correct statement of the issue before this court. The Appellate Court's initial conclusion was that a challenge to the admission of this evidence was unpreserved because defense counsel had informed the trial court that his motion to suppress was not directed at the buccal swab. *State v. Marrero-Alejandro*, *supra*, 159 Conn. App. 397. The defendant does not challenge that conclusion in his certified appeal. Therefore, we have reformulated the certified question as follows: Did the Appellate Court properly conclude that the defendant's unpreserved challenge to the trial court's admission of the buccal swap did not present a question of constitutional magnitude? See *State v. Ouellette*, 295 Conn. 173, 184, 989 A.2d 1048 (2010) (reformulating certified question to conform to issue actually presented and decided in appeal); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005) (same). After examining the entire record on appeal and considering the briefs and oral arguments of the parties, we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted. The appeal is dismissed.