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WARRANTLESS SEARCHES OF SHARED RESIDENCES

QUESTION: Is a warrantless consent search of a shared residence valid as to both residents when one resident gives consent, but the other resident, who is present when permission to search is given, refuses to give consent?

ANSWER: No. When one occupant of a shared residence is present and voices objection when another resident gives consent to search, the search is invalid as to the objecting resident.

CASE: *Georgia v. Randolph*, No. 04-1067, Supreme Court of the United States
Decided March 22, 2006

In *Georgia v. Randolph*, the Supreme Court considered the validity of a warrantless search of a residence based upon one occupant's consent to search when a physically present co-occupant refuses to give consent to search. The Supreme Court concluded that in regard to the occupant who refuses to consent, a warrantless search of the home is invalid under the Fourth Amendment.

The facts in *Georgia v. Randolph* established that Scott Randolph and his wife, Janet, separated in May 2001. Janet left the marital home in Georgia with the couple's son and went to stay with her parents. In July 2001, Janet returned to the marital home with her son. On July 6, 2001, Janet contacted the police, complaining that, after a domestic dispute, her husband had left the house with the couple's son. When officers arrived at the house, Janet told them that her husband was a cocaine user whose habit had caused financial troubles.

While the police were speaking to Janet, Scott Randolph returned. He explained that he had removed the child to a neighbor's house because he feared his wife might take him away again. He denied any cocaine use, countering that it was his wife who abused drugs and alcohol. One of the officers, Sergeant Murray, then left with Janet to retrieve the child. When they returned, she continued her complaints about her husband's drug use, and said there were "items of drug evidence" in the house. Sergeant Murray asked Scott Randolph for permission to search the house, which he plainly refused. The sergeant then asked Janet Randolph for her consent to search, which she readily gave.

She led the officers to an upstairs bedroom that she identified as Scott's, where Sergeant Murray observed a section of a drinking straw with a powdery residue he suspected was cocaine. He then left the house to get an evidence bag from his car and to call the district attorney's office. The district attorney instructed him to stop the search and apply for a warrant. When Sergeant Murray reentered the house, Janet withdrew her consent. The officers, however, took the straw to the

police station, with the Randolphs. After obtaining a search warrant, officers returned to the residence and seized further evidence of drug use. Scott Randolph was subsequently indicted for possession of cocaine.

Prior to his trial, Scott Randolph moved to suppress the evidence seized from the house. The trial court denied the motion, and Scott appealed. The Court of Appeals of Georgia reversed, principally on the ground that “the consent to conduct a warrantless search of a residence given by one occupant is not valid in the face of the refusal of another occupant who is physically present at the scene to permit a warrantless search.” The State Supreme Court affirmed, and the United States Supreme Court agreed to hear the case.

The United States Supreme Court upheld the decision of the Georgia Court of Appeals, holding that one occupant of a shared residence may not give law enforcement officers effective consent to search and seize evidence to be used against another occupant who is present and states a refusal to permit the search. In reaching this conclusion, the Supreme Court first acknowledged that although warrantless searches of persons’ homes are generally unreasonable under the Fourth Amendment, an individual who possesses authority over the premises may, by giving his voluntary consent, authorize officers to conduct a warrantless search of his home. The Court then observed, however, that none of its previous “co-occupant consent to search cases” presented the situation where a second occupant of the home is physically present when the first occupant gives consent, but the second occupant tells the officers that they are not allowed to conduct a search. Faced with this circumstance, the Court turned to a review of “societal practices” and precepts of property law to conclude that a “co-tenant wishing to open the door to a third party has no recognized authority . . . to prevail over a present and objecting co-tenant . . .” Such a “disputed invitation” gives a police officer “no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.” Relying on long-established historical principles and legal precedent that afford a special place for the privacy of the home, the Court concluded that “[d]isputed permission [to search the home] is thus no match for this central value of the Fourth Amendment [*i.e.*, the right of privacy in one’s home] . . .” In reaching its conclusion, the Court acknowledged the competing interest of the consenting occupant’s concern as a citizen in bringing criminal activity to light. However, the Court summarily concluded that a generalized interest in expedient law enforcement cannot, without more, justify a warrantless search.

NOTE: In *Georgia v. Randolph*, the Supreme Court acknowledged that it was drawing a “fine line” in regard to its prior decisions concerning a co-occupant’s authority to voluntarily consent to a warrantless search of premises. As a result, the Court limited its holding to the specific facts of the case. In this regard, it is important to understand that the impact of the decision applies only to *warrantless searches of a residence for evidence where one co-occupant consents to the search while, at the same time, another physically present co-occupant expressly refuses consent*. Thus, the holding in *Randolph* does not apply in several important circumstances, including: (1) When an occupant of the premises allows the police to enter the premises *for reasons other than an evidentiary search*. If the police are allowed entry for reasons other than to conduct a search, and observe contraband in plain view, the contraband may be seized without a warrant. Further, if the police are allowed to enter for reasons other than to search, and one of the occupants then informs the police of the presence of contraband in the residence, this may, depending on the nature of the contraband, create an “exigency” that justifies immediate investigative action on the part of the

police; (2) If one co-occupant consents to a warrantless search and the other co-occupant or co-occupants of the dwelling are not physically present at the time consent is given. Essentially, the holding in *Randolph* is limited to the situation where the unconsenting occupant is physically in the officers' presence when the request for consent is made. *The case does not impose any obligation on police to take affirmative steps "to find a potentially objecting co-tenant before acting on the permission they [have] already received."* However, if there is evidence that the police purposely removed a potentially objecting occupant "from the entrance" for the sake of "avoiding a possible objection", the search may be disallowed; (3) If exigent circumstances exist, police may enter the residence regardless of the consent or objection of any occupant. Examples of exigent circumstances may include when a person's life or safety has been threatened; when an officer is in hot pursuit; when an officer is in danger; when evidence in the residence is about to be destroyed; or it is likely that a suspect will flee. "Exigency" also may arise when one co-occupant consents to a search while another refuses. For example, if the co-occupant consenting to the search informs the police that there is contraband in the residence that is easily destroyed, and the objecting occupant cannot be prevented from destroying this evidence during the time required to obtain a warrant, immediate police action may be justified. Obviously, the "exigency" will be dependent on the totality of the circumstances, including the nature of the contraband described to the officers.

Keeping the concept of exigent circumstances in mind, the Court in *Randolph* stated that the case "has no bearing on the capacity of the police to protect domestic [abuse] victims." The Court insisted that its opinion raises no question about the authority of the police to *enter* a dwelling to protect a resident from domestic abuse, so long as the police have good reason to believe such a threat exists. At face value then, and drawing the distinction between merely *entering* a residence and entering to *search* for evidence, police may still lawfully *enter* a residence over objection to provide any protection that is reasonable under the circumstances.

Unquestionably, the *Randolph* decision will result in some police, and judicial, uncertainty in the area of co-occupant consent searches. However, the end result may not be the "complete lack of practical guidance for the police in the field" predicted by the dissenting justices. The elemental "rules of thumb" to keep in mind are that *Randolph* applies only to evidentiary searches, and its holding is limited only to instances where the objecting co-occupant is physically present when consent to search is given, and expressly communicates his or her refusal of consent to search.

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