



A T T O R N E Y S

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Consent Searches of Homes

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Georgia v. Randolph decided March 22, 2006

Facts

Wife and husband separated in May 2001. She took the child and moved in with her parents for 6 to 8 weeks.

She returned in July to the marital home. Police are

called to a domestic dispute at the residence. When they arrive Wife tells them that Husband uses cocaine.

Husband tells police that Wife uses drugs and alcohol. Wife tells police there are drug items in the house. Police

ask Husband for consent to search. He refuses. Police then ask Wife for consent to search and she agrees. Wife

takes police to Husband's room where she shows them a straw with cocaine residue. The officer leaves the house

to get an evidence bag and calls a prosecutor who tells him to get a warrant. When the officer returns, Wife with-

draws consent. The officer seizes the straw and takes both Husband and Wife away from the house until a search

warrant is obtained. Husband is charged for the cocaine residue.

The issue for the U.S. Supreme Court to decide is whether a search can be conducted in a residence where one tenant is present and refuses consent and one tenant gives consent.

The Court ultimately decides that A WARRANTLESS SEARCH OF A SHARED RESIDENCE BASED ON THE CONSENT OF ONE TENANT AND OVER THE EXPRESS REFUSAL OF A TENANT WHO IS PRESENT IS NOT REASONABLE AND THEREFORE UNCONSTITUTIONAL. The warrantless search by the police in this case is unconstitutional, even with Wife's consent to search.

(Please take note that the Court does not limit this decision based on facts that the Wife had moved out or that the room searched was called the Husband's room. This is a wide-ranging decision.)

The Court does recognize that a tenant has the ability to give voluntary consent over areas in which there is possessory interest. The justices also recognize that a co-tenant can still act on his or her own and find evidence and turn it over to law enforcement on their own accord. The justices also recognize that the co-tenant's information to law enforcement can still be used to get a warrant. But the co-tenant's consent, with the express refusal of the other tenant is now not sufficient to justify a warrantless search of the home.

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The Court says that if a tenant is absent (as in *United States v. Matlock* 415 U.S. 164 1974)) or asleep in another room (as in *Illinois v. Rodriguez* 490 U.S. 177 (1990)), the law enforcement officers may still search on a co-tenant's consent. IT IS ONLY IF A TENANT IS THERE OBJECTING THAT OFFICERS COULD NOT SEARCH.

The dissenting opinions have serious concerns about what the majority's ruling means for domestic violence cases. What happens when a law enforcement officer responds to a domestic call and the spouse suspected of the violence refuses the officer's request to enter or search?

In response to that question, the majority states that this case has no ill-effect on the officer's ability to protect domestic violence victims. The Court says that as long as officers have a “good reason to believe” that a threat of violence exists “it would be silly to suggest that the police would commit a tort by entering . . . to give a complaining tenant the opportunity to collect belongings and get out safely or to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur however much a spouse or other co-tenant objected.” The Court goes further and says that after a lawful entry in that situation, anything the officer sees in plain view could be seized.

What First Line Supervisors Should Know

If your officers respond to a call at a residence and one tenant of the residence gives consent to search and one does not, officers who wish to search need to stop and apply for a search warrant (assuming there is enough information to support a finding of probable cause).

If officers have exigent circumstances to make entry, to prevent injury or destruction of evidence, this type of entry would still be allowed. Officers could seize anything in plain view and then go get a search warrant.

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