

Case Law Alert: U. S. Supreme Court Decides *Georgia v. Randolph*, Holds That Denial of Consent by One Resident Overrides Grant of Consent by Another

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The U.S. Supreme Court's ruling in *Georgia v. Randolph* on March 22, 2006, changes the rules governing some consent searches of private premises. Because this decision is contrary to the way many law enforcement officers have been advised and trained, and because of the frequency with which *Randolph*-type fact patterns occur, it is critical that this new information be disseminated to all law enforcement officers immediately

What Is Changed

When adult co-residents of a home are both present, and one denies consent to enter and search and the other purportedly grants consent, police may not enter or search based on the purported consent. The denial of consent by one overrules and overrides what would otherwise be a valid consent by the other.

The federal appeals courts that had previously dealt with this issue had held to the contrary, as had most state appeals courts. But the matter is now resolved by the U.S. Supreme Court in *Georgia v. Randolph*.

Facts of the Case

In *Randolph* the police were called to the residence of a couple having ongoing marital problems. In this instance the wife was claiming the husband was wrongly taking their child away. When the police arrived, the wife also complained that the husband was using drugs. The husband arrived at the scene with the child and asserted that the wife was the one using drugs. The wife then stated that there were drugs in the house.

Officers at the scene asked the husband for consent to search the residence and he unequivocally refused. Officers then asked the wife for permission to enter and search and she readily consented. Officers proceeded into the home, where they found a straw with what appeared to be cocaine residue in it. Police seized the straw and, because the wife then withdrew her consent, applied for a search warrant in order to continue the search. Upon searching the house pursuant to the warrant, the police obtained more evidence of drug use, which led to an indictment of the husband for possession of cocaine.

Prior to his trial on the drug charges, the husband moved to suppress the drug evidence, arguing that his wife's consent was invalid because of his explicit denial of consent and that the evidence supporting the issuance of the warrant was therefore product of an illegal warrantless search.

The Georgia trial court denied his motion but his appeals in the Georgia court system were successful. The state then asked for review by the U.S. Supreme Court which accepted the case and also sided with the husband, affirming the Georgia Supreme Court's ruling that the wife's consent was insufficient under the circumstances and that the resulting evidence therefore must be suppressed.

Implications of the Ruling

The logic of this case seems to suggest that if only one resident is present initially and an officer has gained lawful entry based on the consent of that resident, the officer would have to leave the premises if another resident arrived and ordered the officer to leave or otherwise revoked the earlier consent.

But if an officer already lawfully present in the premises based on consent had probable cause to arrest a newly arriving resident who was ordering the officer to leave, presumably the officer could arrest that resident and leave with him.

What Is Unchanged

First and foremost, this case deals only with situations involving a resident who is present and denying consent. If the only resident present at a home gives a valid consent, the validity of that consent is unchanged by the later insistence of another resident that he did not approve of the search and would have denied consent had he been present. Of course, future cases will have to decide whether, when denied consent by one resident, police can simply wait till that resident leaves the premises and then seek consent from another resident.

Unchanged is the fact that a resident may consent validly only to a search of areas which that resident uses exclusively or uses in common with another resident. One resident cannot consent validly to a search of an area in which another resident has exclusive reasonable expectations of privacy. In other words, either resident may consent to a search of common areas as long as another resident is not present and denying consent.

This decision does not change in any way an officer's authority to enter a home without consent or a warrant if the officer reasonably believes that exigent circumstances require it, as might be the case in some matters of domestic violence, for example. Also, if an officer is already lawfully present inside private premises, the officer's authority to use the plain view doctrine of warrantless seizure is unchanged. And if an officer has already made a lawful plain-view observation or otherwise lawfully gained information establishing probable cause to search, the officer may use such observations or information to apply for a search or arrest warrant even if the officer was expelled from the premises after his or her observations were made. Also, the rule in the *Randolph* case does not apply to a residence where there is a recognized hierarchy of privacy interests, as in the case of parents in relation to young children who are co-residents.

Determinations of when a juvenile may assert adult-style privacy rights should be made as before *Randolph*.

Also unchanged, of course, is that an officer may not detain or arrest someone simply because he or she refuses to consent or revokes an earlier granted consent. A refusal to consent generally cannot be considered as a factor in formulating reasonable suspicion or probable cause. The assertion of a constitutionally protected right, as here the right to refuse to consent, generally cannot be the basis for an arrest or, for that matter, an investigative detention.

Officers should seek advice from local prosecutors and other legal advisors regarding the *Randolph* ruling

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