Recent Case Report

Georgia v. Randolph

(2006) __ U.S. __ [164 L.Ed.2d 208]

ISSUE

If officers obtain consent to search a home from one resident, is the search illegal if another resident objects?

FACTS

Police in Georgia were dispatched to the home of Janet and Scott Randolph to investigate a domestic disturbance. When they arrived, Janet told them that Scott "was a cocaine user" and that there was "drug evidence" in the house. The officers wanted to confirm this, so they asked Scott if he would consent to a search of the house. He said, no. So they asked Janet and she said, yes.

She then led one of the officers upstairs to a bedroom that "she identified as Scott's." As he entered, he saw drug paraphernalia in plain view. He seized it, then obtained a warrant to search the house for drugs. The search netted "evidence of drug use." Scott was arrested, and the trial court denied his motion to suppress the evidence.

DISCUSSION

Although Janet had consented to the search, Scott contended it was unlawful because he had voiced an objection. The question, then, was whether officers can search a room based on the consent of one resident with common authority over the room if another resident with common authority objects.[1]

The answer would seem to be, yes. This is because the United States Supreme Court in *U.S.* v. *Matlock*[2] ruled that when a person consents to a search of his residence, it is immaterial that another resident would have objected. The Court reasoned that when people share a residence, each assumes the risk that one of the others will permit a search of common areas.[3]

In *Randolph*, however, the Court said that *Matlock's* "assumption of the risk" principle does not apply when the objecting resident is present. Said the Court, "[A] warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident."

Consequently, the Court ruled that the officer's entry into Scott Randolph's bedroom was unlawful, and that the evidence should have been suppressed.

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[1] **NOTE**: Although the Court said the drugs were found in a bedroom that was "identified as Scott's," it does not appear that the Court was suggesting that a wife does not have common authority over all rooms in the family home. See *Frazier* v. *Cupp* (1969) 394 U.S. 731, 740 [if a person has a right to joint access or control it is immaterial that he does not actually exercise that right].

[2] (1974) 415 U.S. 164, 170 ["[T]he consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared."].

[3] (1974) 415 U.S. 164, 171, fn.7.

COMMENT

The reason our discussion of this case was so brief is that the Court did not offer a plausible—much less, convincing—legal analysis. The justices claimed they couldn't because there was "no recognized authority in law" that the wishes of the consenting inhabitant prevail. What they really meant was that there was no recognized legal authority that would support their view. After all, the Court in *Matlock* resolved the issue when it ruled that "any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched."[4]

Having found nothing in *Matlock* or any of the Court's other decisions on third-party consent that suited their purpose,[5] the justices were forced to look elsewhere. They might have tried to find some thoughtful, well-written anti-*Matlock* lower court opinions. If so, they would have been sorely disappointed because the lower courts have looked upon *Matlock* as *the* respected authority on the subject for over 30 years.

Undaunted, the justices decided to look outside the law—to the ever-fruitful field of sociology. And, to no one's surprise, they found something they could use: a previously-undetected post-*Matlock* cultural shift. While many people might think that Supreme Court justices are somewhat insulated from the real world, these particular justices reported that they had stumbled upon a subtle change in the way the man-on-the-street views his privacy rights. So, naturally, they decided to incorporate it into the Constitution.

Only one problem remained. How could they write an opinion based on a subtle cultural shift without sounding flaky? They couldn't. Which explains why their decision—a document representing the refined judgment of the highest court in the United States of America—was based on such shadowy abstractions as "commonly held understandings," "shared social expectations," "voluntary accommodation," "social practice," "social custom," "customary social understanding," the "comfort" level of visitors, and the "multiplicity of living arrangements."

The justices did not, however, completely ignore the law. They claimed that their decision was supported by its ruling that hotel managers and landlords cannot usually consent to searches of leased premises.[6] But because there is absolutely no correlation between a person's right to admit visitors into her own home, and a landlord's right to admit people into a renter's apartment, they accomplished nothing other than expose their desperation in finding *some* legal support for their view.

They did, however, make some interesting new law, albeit inadvertently. They said several times that the officer's search of Scott's bedroom was illegal only "as to him." This was noteworthy because, until now, the Fourth Amendment recognized only two types of police searches: lawful (reasonable) and unlawful (unreasonable). Now we have a new type: the semi-lawful search.

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[4] (1974) 415 U.S. 164, 171, fn.7.

[5] **NOTE**: The majority implied that its ruling was merely an extension of its holding in *Minnesota* v. *Olson* (1990) 495 U.S. 91 in which it ruled that an overnight houseguest has a reasonable expectation of privacy in a bedroom he was occupying for the night. Specifically, it claimed that "we took a step toward" its ruling in *Olson*. As might be expected, the majority was either unwilling or unable to explain how *Olson* was even slightly relevant to the issue at hand.

[6] See *Stoner* v. *California* (1964) 376 U.S. 483, 488.

Despite *Randolph's* questionable legitimacy, it is now the law of the land (at least until the these justices sense another cultural shift), which means that officers must know how to apply it. Our view is as follows: Because the Court limited its ruling to "the circumstances here at issue," and because it said its ruling would have "no bearing on the capacity of the police to protect domestic victims," it appears that a consensual search is permitted despite an objection unless both of the following circumstances existed:

(1) **Objector at the scene**: The objecting inhabitant must have stated his objection in the officers' presence when they sought to enter. This means that in most cases the objector must be, in the words of the majority, "standing at the door."

(2) **Objective to obtain evidence**: The sole purpose of the officer's entry or search must have been to obtain evidence of a crime. Consequently, it appears that officers may enter or search despite the suspect's objection in the following situations.

KEEP THE PEACE CALLS: The purpose of the officers' entry was to keep the peace while, for example, the consenting inhabitant gathered her belongings.

DOMESTIC VIOLENCE INVESTIGATION: Officers were called to the residence because of reported domestic violence, and they entered for the purpose of speaking with the consenting inhabitant.[7]

EMERGENCY AID: Officers reasonably believed an immediate entry was necessary to provide emergency aid or eliminate an immediate threat to a person or property. (The majority in *Randolph* said that officers could also enter if they had "good reason" to believe such a threat exists. Consistent with the rest of their slipshod opinion, the justices failed to explain whether its "good reason" standard is the same as probable cause or whether it is a brand-new level of proof.)

DESTRUCTION OF EVIDENCE: Officers reasonably believed that evidence inside the residence would be destroyed if they left to seek a warrant without first securing the premises.[8] POV

[7] **NOTE**: In one of the longest run-on sentences in the history of American jurisprudence (and another example of the lack of care that went into its opinion), the majority said, "No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists, it would be silly to suggest that the police would commit a tort by entering, say, 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 (or soon will) occur, however much a spouse or other cotenant objected." **NOTE**: In a pathetic attempt to prove that, despite its ruling, it is sensitive to the problems of domestic violence, the majority cited four studies showing that spousal abuse is a problem.

[8] See *Segura* v. *United States* (1984) 468 U.S. 796.