

Fernandez v. California

(2014) __ U.S. __ [2014 WL 700100]

Issue

If a person refuses to consent to a search of his home, can officers obtain consent to search from another resident after they arrest the objecting resident and remove him from the premises?

Facts

At about 11 a.m., a man armed with a knife robbed and stabbed a young man in Los Angeles. As LAPD officers arrived, they were approached by a witness who pointed to a certain apartment and said, “The guy is in the apartment.” Just then, officers saw a man run into the apartment and he matched a general description of the robber and his clothing. Shortly after the man ran into the apartment, the officers heard a commotion inside: woman screaming and the sounds of fighting.

The officers knocked on the door which was answered by a woman, Roxanne Rojas, who was bleeding and had apparently just been beaten. When they asked her to step outside so they could search for the robber, the man they were chasing stepped from behind her and said, “You don’t have any right to come in here. I know my rights.” The officers promptly arrested the man for beating Rojas and removed him from the apartment. The man was Walter Fernandez.

About one hour later (after the robbery victim identified Fernandez at a field showup), officers returned to the apartment and obtained Ms. Rojas’s consent to search the premises. The search netted, among other things, a butterfly knife, clothing similar to that worn by the robber, and gang indicia which prosecutors used at trial to prove that the holdup was gang-related. After Fernandez’s motion to suppress the evidence was denied, he was convicted of various crimes and sentenced to 14 years in prison. The California Court of Appeal affirmed the conviction, and Fernandez appealed to the United States Supreme Court.

Discussion

Fernandez argued that the evidence found in his house should have been suppressed because the search violated the rule of *Georgia v. Randolph*.¹ This controversial rule, which was announced by the United States Supreme Court in 2006, prohibits officers from searching a home pursuant to the consent of one resident if another resident objected to the search and the following three circumstances existed:

- (1) **SEARCH TO OBTAIN EVIDENCE:** The purpose of the search was to obtain evidence against the objecting resident.
- (2) **EXPRESS OBJECTION:** The objecting resident expressly objected to the search.
- (3) **OBJECTION IN OFFICERS’ PRESENCE:** The objecting resident voiced his objection in the officers’ presence at the time they sought consent.

Citing the third requirement, Fernandez argued that the search of his home violated *Randolph* for two reasons. First, he claimed the objecting resident should not be required to voice an objection at the time the officers obtained consent if he was unable to do so because they had physically removed him from the premises. This argument was based

¹ (2006) 547 U.S. 103.

on language in *Randolph* that such a search may be illegal if officers had removed the “potentially objecting tenant from the entrance for the sake of avoiding a possible objection.” But the Court rejected Fernandez’s argument, saying that the removal of the objecting resident could render the search unlawful only if the officers lacked reasonable grounds to do so.² And here, said the Court, the officers had two good reasons for removing Fernandez: (1) they had grounds to detain or arrest him for robbery, and (2) they needed to speak with Ms. Rojas privately about their suspicion that Fernandez had just beaten her.³

Second, Fernandez argued that, even if his removal from the premises did not violate *Randolph*, the search was nevertheless unlawful because he had objected to the search at the door before he was removed (“You don’t have any right to come in here. I know my rights”), and that his objection should be deemed to have remained in full force unless and until he notified the officers that he had changed his mind. The Court disagreed, noting that such a rule “would produce a plethora of practical problems.” Among them: people would be unable to obtain assistance from officers in ridding their homes of dangerous drugs or weapons—possibly for years—unless the objecting resident changed his mind or a court somehow determined that the objecting resident had lost his right to object. Consequently, the Court ruled that a resident’s objection to the search lasts only while he is present at the scene. As it pointed out, “If *Randolph* is taken at its word—that it applies only when the objector is standing at the door saying ‘stay out’ when officers propose to make a consent search—all of these problems disappear.”

Although *Fernandez* did not make *Randolph* disappear, it did the next best thing. POV

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² **NOTE:** The Court also ruled that the officers’ motivation for removing the objecting resident is immaterial—what matters is that they had reasonable grounds to do so.

³ **NOTE:** The Court’s ruling in *Fernandez* effectively abrogated the Ninth Circuit’s controversial rule in *U.S. v. Murphy* (9th Cir. 2008) 516 F.3d 1117 that consent given by a spouse is invalid if the suspect was no longer at the door because he had been lawfully arrested.