

In The
Supreme Court of the United States

STATE OF GEORGIA

Petitioner,

v.

SCOTT FITZ RANDOLPH

Respondent.

**On Writ of Certiorari To The
Supreme Court of Georgia**

BRIEF FOR PETITIONER

Please serve:

Scott E. Jones
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
(404) 656-3351

SCOTT E. JONES
Council of Record for Petitioner
Sr. Asst. Attorney General

JONATHON A. DEWEY
Partner, Dewey, Cheatum & Howe

THEODORE S. CHEATUM
Partner, Dewey, Cheatum & Howe

ARTHUR K. HOWE
Partner, Dewey, Cheatum & Howe

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QUESTION PRESENTED

Can the consent of a spouse give the police the right to search the marital dwelling even if the other spouse objects?

CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides:

The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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A. The Case and the Respondent's Motion to Suppress

Respondent Scott Fitz Randolph (hereinafter referred to as "Randolph") was indicted by the Sumter County, Georgia, grand jury on November 27, 2001, for possession of cocaine.

Randolph moved to suppress the cocaine which had been seized in a search of the residence he shared with his wife, a search to which his wife consented, as Randolph admitted in his motion to suppress, but for which he had denied permission. Randolph claimed that the search of the residence, over his objection, was illegal and violated his Fourth Amendment rights.

Evidence presented at the October 3, 2002, suppression hearing established that Randolph's wife called the local police department on the morning of July 6, 2001, and asked an officer to come to the Randolph residence about a domestic dispute with her husband. Although the couple had previously been separated, she had returned to the marital home approximately three days before with Randolph's consent, and she still had clothing and furniture at the house. Although the couple actually rented the house from Randolph's father, police understood Randolph and his wife to own the home. Randolph, who was then a practicing attorney, had an office in a room of the house. Mrs. Randolph told the responding officers that Randolph had taken their child away. She also complained that Randolph had been using a lot of cocaine, which was causing financial and other problems for them. A few minutes later, Randolph returned to the home, told officers where he had taken their son and explained that he had taken the child because he was afraid his wife might take the child away to her family in Canada.

Officers then escorted Randolph's wife to the neighbor's home where they picked up the child and returned to the Randolph residence. Mrs. Randolph renewed her accusations about Randolph's cocaine use. She told officers there were "items of drug evidence" in the home.

Sergeant Murray asked Randolph if he could check the house, and Randolph said no. The Sergeant then asked Mrs. Randolph if police could search the house, and not only did she say yes, but Mrs. Randolph led the Sergeant upstairs to a bedroom in which the officer saw a cut piece of a drinking straw on top of a jar. The straw was coated with white residue, and Sergeant Murray suspected it was used to ingest cocaine. He then went downstairs, reported what he had seen and went to his car to get an evidence bag. When the Sergeant returned from the car, Mrs. Randolph had withdrawn her consent. The Sergeant then collected the items he had seen upstairs: the straw, a business card and some white residue, and took the evidence, as well as Randolph and Mrs. Randolph, to the police station.

The Sergeant then obtained a search warrant to search the home further and seized 25 drug-related items during the subsequent search of the residence. No items were seized from Randolph's office. The only room which had been searched prior to the warrant issuing was the bedroom. Randolph claimed that his wife was highly intoxicated from drinking heavily the preceding night, her face and eyes were red, her speech was slurred and she was unsteady on her feet. However, no police officer detected an odor of alcohol about her or thought she was intoxicated. Although Sergeant Murray described her as "a highly upset mother," she was not incoherent or incapable of giving consent due to any intoxication. The trial court denied the motion to suppress in an order filed on October 17, 2002, specifically finding that Randolph's wife had "common authority to grant consent for police to search the marital home." The trial court also found that she was "fully competent" to grant consent to search.

B. The Supreme Court's Definition of a Search and Appropriate Consent

A "search" occurs under the Fourth Amendment "when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109,

(1984). This Court has “long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so.” *Florida v. Jimeno*, 500 U.S. 248, (1991).

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” The Court has moved away from relying upon distinctions developed in property and tort law and looks to whether “the person who claims the protection of the amendment has a legitimate expectation of privacy in the invaded place.” *Rakas v. Illinois*, 439 U.S. 128, (1978); *Katz v. United States*, 389 U.S. 347, (1967). However, the Fourth Amendment generally bars a warrantless entry into a person’s home. *Illinois v. Rodriguez*, 497 U.S. 177, (1990); *Payton v. New York*, 445 U.S. 573 (1980).

To that end, a search conducted without a warrant issued upon probable cause is “presumptively unreasonable” unless it falls within one of the well-established exceptions: consent, exigent circumstances, or automobiles. *United States v. Karo*, 468 U.S. 705, (1984). It is the consent exception that is involved in this case. “[T]he search of property, without warrant and without probable cause, but with proper consent, is valid under the Fourth Amendment.” *United States v. Matlock*, 415 U.S. 164, (1974). Such consent may be obtained either from the person whose property is searched or “from a third party who possesses common authority over the premises.” *Illinois v. Rodriguez*, 497 U.S. (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), and *Matlock*, 415 U.S.). Police may also obtain valid consent to search from a third person if police reasonably believed, at the time of the warrantless entry, that the third person had common authority over the premises but facts later show police were mistaken, using an objective standard. *Rodriguez*, 497 U.S.

C. Consent of Wife to Search Marital Property is Valid

A search cannot be said to be “somehow ‘unfair’” if the person consented. *Schneckloth* 412 U.S. There “is nothing constitutionally suspect in a person’s voluntarily allowing a search.” *Ibid.* The Court noted that policies underlying the Fourth Amendment should not discourage citizens from helping to apprehend criminals and that a community has “a real interest” in encouraging consent, as the search that ensued could yield needed evidence for solving and prosecuting a crime, and help make sure that an innocent person was not wrongly charged. *Schneckloth*, 412 U.S.

The question of consent to enter is to be judged against “an objective standard,” looking at whether all the facts available to the officer at the moment would warrant a man of reasonable caution to believe that the consenting party had authority over the premises. *Illinois v. Rodriguez*, 497 U.S. This objective standard does not require complete factual accuracy, as probable cause to support a warrant is itself an “assessment of probabilities in particular factual contexts.” *Rodriguez*, 497 U.S. (quoting *Illinois v. Gates*, 462 U.S. 231, 232 (1983)). Instead, the Fourth Amendment requires “reasonableness” from magistrates and police in responding to the many factual situations that regularly arise in the search and seizure context. *Rodriguez*, 497 U.S.. Based upon that objective standard of reasonableness, this Court deemed valid a search conducted by police based upon the consent of a third person present at the apartment whom police reasonably believed at the time had common authority over the premises, but who, as subsequent facts revealed, did not.

“In reaching that conclusion, this Court made clear that: What [the defendant] is assured by the Fourth Amendment itself, however, is not that no government search of his house will occur unless he consents; but that no such search will occur that is “unreasonable.”

Rodriguez, 497 U.S. (quoting the Fourth Amendment).

More importantly, the Court found that such a “waiver” approach to consent searches would be “thoroughly inconsistent” with decisions recognizing third-party consents, citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), where the wife voluntarily gave a gun and clothing that were her husband’s to police; *Frazier v. Cupp*, 394 U.S. 731, (1969), where evidence seized from a shared duffel bag was deemed admissible, as “the defendant had assumed the risk that his cousin, with whom he shared the bag, would allow the police to search it”; and *Hill v. California*, 401 U.S. 797, (1971), where police validly seized evidence from the petitioner’s apartment.

One year after defining what valid consent is, this Court dealt with who can consent and held that not only can the defendant give consent, but third persons with “common authority over or other sufficient relationship to the premises or effects sought to be inspected” can give permission for a warrantless search. *Matlock*, 415 U.S.. In that case, Matlock was arrested in the front yard of a house leased to a married couple, and living in the home were the lessee wife, several of her children including her daughter Mrs. Graff, Mrs. Graff’s toddler son, and Matlock. *Ibid.* U.S. Police knew Matlock lived there but never asked him for consent. Instead, arresting officers went to the door and were admitted into the house by Mrs. Graff, she was asked for and gave officers consent to search for money and a gun, she told police which bedroom she and Matlock occupied, and police found a gun and money in a diaper bag in the only closet in that room. *Ibid.*

In beginning its legal analysis, this Court noted:

It has been assumed by the parties and courts below that the voluntary consent of any joint occupant of a residence to search the premises jointly occupied is valid against the co-occupant, permitting evidence discovered in the search to be used against him at a criminal trial.

Matlock, 415 U.S.

The Court noted *Schneekloth* had recognized that third-party consent cases, such as *Frazier* and *Coolidge*, supported the view that a consent search is “fundamentally different in nature from the waiver of a trial right.” *Matlock*, 415 U.S.

These cases at least make clear that when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained by a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.

Matlock, 415 U.S.

In a footnote, this Court made clear this “common authority” is not derived from property law but:

[R]ests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize 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.

Matlock, 415 U.S.

Furthermore, Mrs. Randolph told police Randolph used large amounts of cocaine and “items of drug evidence” were in their home. There is no legitimate interest in possessing contraband, so that “government conduct that only reveals the possession of contraband compromises no legitimate privacy interest.” *Illinois v. Caballes*, ___ U.S. ___, 125 S.Ct. (2005). The rule applied below unwittingly protects non-legitimate interests by looking only to one occupant’s refusal, despite another occupant’s consent and willingness to cooperate.

D. The Withdrawal of Voluntary Consent

In his motions to suppress evidence found in the search, Mr. Randolph points out that his wife withdrew consent after the police had seized evidence of drug use. This Court has been clear that an individual may withdraw consent with an “unequivocal act or statement of withdrawal.” *United States v. Bily* 406 F. Supp. 726 (E.D. Pa. 1975). In *Bily*, the lower courts found that an individual has the right to withdraw consent to search at any time, so long as the

individual makes clear statements to that effect. Mr. Bily's statement "That's enough, I want you to stop," was a revocation of consent according to the lower court, which this Court let stand by denying cert to the United States' appeal. In *United States v. Ho*, 94 F.3d 932 (5th Cir. 1996), the U.S. Court of Appeals for the Fifth Circuit found that Ho's attempts to retrieve his portfolio from the officer during a search constituted a revocation of his earlier consent to search. In this decision the court recognized his acts constituted a valid revocation of consent. Again, this Court denied cert to the appeal filed by the United States.

However, in both of these cases, consent was withdrawn before evidence was found. As it applies to this case, Mrs. Randolph withdrew her consent after the police had found the straw, a business card and some white residue. While this Court has been mostly silent on this issue, the decision the Court let stand in *Bily* can give guidance. In *Bily*, the lower Court ruled that any evidence seized during the consent aspect of the search is admissible as evidence, while evidence seized after consent is withdrawn is inadmissible evidence. Clearly, the police in this case followed these guidelines. Only evidence found during the consent aspect of the search was seized by police and after Mrs. Randolph withdrew her consent, the police filed for a search warrant to continue the search, in which the police seized 25 other drug-related items.

E. Conclusions

The State of Georgia submits it is reasonable for police to obtain and act upon the voluntary consent of one occupant with common authority to search the common areas of that premises, even if other occupants object. The occupant giving consent is not waiving anyone else's rights but is simply granting access to search the areas shared with others and in which there is an obvious reduced expectation of privacy. If a search authorized by one with apparent authority can be deemed reasonable, then surely the Fourth Amendment permits one with actual

authority to give police valid permission to search, regardless of other occupants' positions. Such a rule flows logically from *Schneckloth*, *Matlock*, and *Rodriguez*.

THEREFORE, the State of Georgia prays that the decision of the state appellate court be reversed and that a rule be adopted which makes one co-occupant's voluntary consent sufficient to authorize a warrantless search.

Respectfully Submitted,

Please serve:

Scott E. Jones
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
(404) 656-3351

SCOTT E. JONES
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