

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**

REPLY BRIEF FOR PETITIONER

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A. Reply to the Respondent

It is most interesting that the respondent wishes the Court to believe that the Fourth Amendment means that a person's right to privacy in their own homes is absolute and others can only enter at the permission of all inhabitants of the house. They use the case *Minnesota v. Carter*, 525 U.S. 83, 101 (1998) to establish this fact. This straw man argument states that the husband may deny the wish of his wife to invite a guest over to their marriage home. They try to bolster their argument by quoting Justice Kennedy in his concurring opinion, which was not the controlling opinion of the majority in the case. Nonetheless, Justice Kennedy points out that it is within reason for one member of a house to deny access to another private individual because of privacy reasons. Had this case been about Mrs. Randolph inviting someone into their marriage home over the objection of her husband, the Justice Kennedy's concurrence would matter. However, the facts of this case are much different.

Mrs. Randolph consented to the police search, public servants, of her marriage residence because of the threat to her safety due to her husband's drug use. *Illinois v. Rodriguez*, 497 U.S. 177 (1999) establishes a clear precedent here. In the majority opinion of this Court, Justice Scalia states that third-party consent to a search was within the guidelines established by the Fourth Amendment. In this case, Miss Fischer, the girlfriend of Mr. Rodriguez, consented to the search of the apartment she claimed was a joint residence. It was discovered later, however, that Miss Fischer was no longer living in the apartment. This Court ruled that the police search of the apartment was constitutional because the police had proper reason to believe that Miss Fischer was a resident of the apartment at the time of the search.

Furthermore, this Court has further clarified the respondent's argument that the police should have asked Mrs. Randolph to bring the drug-related items to the door. This practice has

been defined as unconstitutional and inconsistent with third-party consent where a wife voluntarily gave police clothing and a gun that belonged to her husband. *Coolidge v. New Hampshire*, 403 U.S. 443 (1991). It is true, however, that when two people share something, the privacy rights of the individual are reduced and the risk the other person will consent to a police search of the shared belonging is assumed. *Hill v. California*, 401 U.S. 797 (1971).

B. The Respondent Actually Misinterprets *Matlock*

The respondent claims that if the Court adopts our interpretation of *United States v. Matlock*, 415 U.S.164 (1974). They argue that if the Court adopts our position then it would open the door to baby-sitters, house cleaners, construction workers and/or lawn workers to consent to a police search of the premises. This is complete hyperbole. Mrs. Randolph was married to Mr. Randolph and is considered to be a joint owner of the premises she consented to for a police search after the claim of drug use had been stated by her. If the Court adopts our position that she had the right to consent to the search of the marriage home, then it does not mean the decision can be interpreted as allowing the police to ask these other people for consent of a residence. While *Rodriguez* has been read to allow the police to obtain the consent of someone they reasonably believed to have authority within the residence in question, it cannot be read to allow the police to ask anyone off the street to give consent for a search.

It is the respondent's interpretation of *Matlock* that should cause concern for this Court. They argue that since Mr. Randolph did not consent to the search, but his wife did, his words should carry more weight with the courts than his wife's words. In other words, they argue that the man's voice in this manner is more important than the woman's. This Sixteenth Century logic has no place in America's Twenty-First Century law code. At the very least, their word

should be taken as equal. Therefore this Court must decide which equal voice carries the most weight in the police's decision to search or not to search.

It should be clear that in the case of a tie, the Court should rule on the side of public safety. Since there is no reasonable expectations of privacy as it relates to the Fourth Amendment when the search involves contraband, *Illinois v. Caballes*, 543 U.S. 405 (2005), which in this case is drug-related items, the Court must rule that the wife's consent in this manner is more important than her husband's.

C. Georgia's Case Without *Matlock*

Let us for a second assume that the Court decides that the respondent's interpretation of *Matlock* is correct and it doesn't apply to this case. Therefore we must return to whether the consent given by a person can be judged against "an objective standard" so that a person of reasonable caution can conclude the person who gave the consent had authority over the premises. *Rodriguez*. This Court has ruled that the decision of the police in this manner does not require complete factual accuracy. *Illinois v. Gates*, 462 U.S. 231 (1983). As stated above, this Court allowed the search of a person's residence from a girlfriend who no longer lived in the apartment, but told police that she did. In addition, the police were correct in searching an apartment of a robbery suspect when they received the permission of his roommate to search the apartment. In this case, the roommate had no knowledge of the fact that contraband was being stored in the apartment. However, this Court ruled that his consent was valid because he had common authority over the apartment. *Hill*.

In the Court's ruling in *Matlock*, both of the above cases were used to support the police search of Mr. Matlock's residence. Therefore, if a roommate or a girlfriend who does not live in

the apartment, but claims to live there, has the authority to consent to a search of a residence, then it should follow that a man's wife has common authority over the marriage residence and consent to a search even if he objects so long as the police are searching for contraband, which in this case would be the drug-related items Mrs. Randolph stated were in the home.

D. Conclusion

Co-occupants such as Mrs. Randolph have a valid interest in having crimes occurring in one's own house detected. If she has reason to suspect that her spouse is conducting some illegal activity in their shared space, she should have the right to consent to a search of that shared space, regardless of any objection by her spouse. She has a legitimate interest in giving consent which could lead to the discovery of contraband and not only distance herself from a potential charge of possession based on an equal access or party to a crime theory, but rid her home of contraband that might be a danger to someone such as her child. These important societal interests are not only frustrated by, but become invisible under Respondent's proposed rule.

WHEREFORE, 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 permission sufficient to authorize a warrantless search.

Respectfully submitted,

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