

In The  
Supreme Court of the United States

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State of Georgia,

*Petitioner,*

v.

Scott Fitz Randolph,

*Respondent.*

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

\_\_\_\_\_  
**BRIEF FOR THE RESPONDENT**

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**QUESTION PRESENTED**

Is it a violation of the Fourth Amendment search if one spouse gives law enforcement permission to search the shared residence, even when the other spouse is present and objects to the search?

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## I. Statement of the Case

1. On July 6, 2001, police responded to a report of a domestic dispute between respondent Scott Fitz Randolph and his estranged wife. The couple had separated several months before, and she had left with the couple's son, as well as most of her belongings, to stay with her family in Canada. On July 4, 2001 – approximately thirty-six hours before the police were called to the house – she arrived at the house to collect her remaining belongings and return to Canada.

On the morning of July 6, respondent had taken the couple's son to a neighbor's house in an attempt to prevent his estranged wife from taking their son out of the country again or, more generally, traveling with him while she was under the influence of drugs and alcohol.

Mrs. Randolph responded by calling the police. Suppress. Tr. 28. When police arrived, they faced dueling allegations. Mrs. Randolph contended that respondent had been using cocaine. He denied that accusation, contending instead that *she* had been using cocaine and had also been drinking heavily. The officer later testified that "there was a lot of animosity going on. This was a marriage about to break apart." *Id.* 15-16. The police requested permission from respondent, who is an attorney, to search the residence without a warrant. He flatly denied them consent. Suppress. Tr. 8, 29. He also contacted the owners of the house – his parents, to whom he personally paid rent – who advised the police by phone that they also did not consent to a search of the premises. *Id.* 30, 38.

Notwithstanding that consent had been expressly denied by both respondent and the owners of the house, the police nonetheless secured consent from respondent's wife.

She then took the officers upstairs, to a room that she identified as respondent's personal bedroom. There, the police found a "piece of cut straw" and what appeared to be cocaine. *Id.* 9. Officers then contacted the district attorney, who advised them to secure a warrant before continuing the search. Suppress. Mrs. Randolph subsequently withdrew her consent to the search as well. *Ibid.*

The officers collected the materials they had seen, arrested both respondent and Mrs. Randolph, and took them to the police station. They then obtained a search warrant on the basis of the evidence found in the home. The ensuing search uncovered various evidence of drug use.

2. The State indicted respondent for possession of cocaine. Respondent moved to suppress the evidence seized from the home on the ground that it was the fruit of an unlawful search. The trial court denied the motion in a one-page order, summarily ruling that Mrs. Randolph "was still in possession of common authority to grant consent for police to search the marital home," with the asserted consequence that she could admit the police over respondent's objection. J.A. 23.

3. On respondent's interlocutory appeal, the Georgia Court of Appeals reversed. Pet. App. 7a-47a. It acknowledged that this Court had held in *United States v. Matlock*, 415 U.S. 164 (1974), that "the 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," because "it is reasonable to expect that a co-habitant with the authority to give such consent might, in fact, exercise that authority." Pet. App. 8a (quoting *Matlock*, 415 U.S. at 170). It saw this case as quite different: when an occupant does not cede control of the premises to another, but rather is physically present and

objects to the search, "it is reasonable for [the] occupant to believe his wishes will be honored." *Id.* 9a. The court reasoned as well that extending *Matlock* to cases in which an occupant expressly objects would draw the police into marital disputes, *id.* 11a, and would unreasonably allow the police to ask for consent from numerous occupants successively until one granted permission to search, *id.* 13a.

4. The Supreme Court of Georgia affirmed. Pet. App. 1a-6a. Joining the Florida, Minnesota, and Washington Supreme Courts, the court held that a contemporaneous objection to a warrantless search by one occupant cannot be overridden by the consent of another. *Id.* 3a (citing *Silva v. State*, 344 So. 2d 559, 562 (Fla. 1977); *In the Matter & Welfare of D.A.G.*, 484 N.W.2d 787, 789 (Minn. 1992); *State v. Leach*, 782 P.2d 1035, 1040 (Wash. 1989)).<sup>1</sup> The court agreed with the view of those courts and a leading commentator that it is not reasonable to permit one occupant to override the Fourth Amendment rights of another.

5. This Court granted the State's petition for a writ of certiorari. 125 S. Ct. 1840 (2005).

## **I. Motion to Suppress**

The judgment of the Supreme Court of Georgia that the warrantless search in this case violated the Fourth Amendment accordingly should be affirmed.

### **A. This Court Has Approved Searches on the Basis of "Third Party Consent" Only When the Individual Has Voluntarily Relinquished His Right to Exclude the Police.**

This court has twice approved such searches, (*Frazier v. Cupp*, 394 U.S. 731 (1969)) and once when one of the occupants of a house consented and none of the others was present or objected (*United States v. Matlock*, 415 U.S. 164 (1974)). In both of these cases the defendants both did not have complaints that their privacy being infringed upon. *Matlock* was not was asked to voluntarily relinquished his consent because *Matlock* was not home, where as Mr. Randolph was present for the search of his property and explicitly and clearly said 'No'.

In *Chapman v. United States*, 365 U.S. 610 (1961), the Court again held that a supposed third party consent was invalid. This time, the case involved the search of a rented home after the landlord consented to the entry. The search discovered illegal moonshine manufactured by the tenants. This Court held that the landlord could not validly authorize the search because the tenants had not granted him the requisite control over the premises. *Id.* at 616-17. The Court 14 reiterated that a broad rule rendering the protection from warrantless searches contingent on the actions of third parties would render the Fourth Amendment ineffective.

"[T]o uphold such an entry, search and seizure 'without a warrant would reduce the [Fourth] Amendment to a nullity and leave [tenants'] homes secure only in the discretion of [landlords].'"

*Ibid.* (alterations in original) (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

## **B. The State's Rule Would Approve an Extraordinary Intrusion into the Core Privacy in the Home That Is the Principal Concern of the Fourth Amendment**

1. This case involves a search of a private home. Despite respondent's express objection, officers intruded into his residence, including his bedroom. The home represents the single most important spatial zone of personal privacy protected by the Fourth Amendment. This Court explained the historical and textual foundation for the unique protection afforded to individual privacy in the home.

"the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose" *Semayne's case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K.B.) the fourth amendment embodies this centuries-old principle "the right of the people to be secure in their persons, houses, and possessions, 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." U.S. Const., Amdmt IV. (italics added).

"The Fourth Amendment protects 'the right of the people to be secure in their houses,' and it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people." *Carter*, 525 U.S. at 99 (Kennedy, J., concurring).

"This Court has characterized that right as 'basic to a free society.'" *Minnesota v. Carter*, 525 U.S. 83, 100 (1998) (Kennedy, J., concurring).

"Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." the home is specifically named in the amendment. the intrusion of police officers into a private residence is also of grave concern for private citizens should feel safe from surveillance in their own home. *Minnesota v. Carter*, 525 U.S. 83, 99 (1998) (Kennedy, J., concurring)

("The Fourth Amendment protects 'the right of the people to be secure in their houses,' and it is beyond dispute that the home is entitled to special protection as the

center of the private lives of our people."). The prototypical "marital bedroom," after all, is by definition a shared space.

The fact that virtually all individuals allow others into their homes, and that most individuals in fact share their homes permanently with family members, hardly undercuts their expectations of privacy. At the time of the framing, for example, 98.6% of all households had more than one member, and the average household size varied from roughly six to eleven people. Robert V. Wells, *THE POPULATION OF THE BRITISH COLONIES IN AMERICA BEFORE 1776*, at 87 tbl. III-7 & 105 tbl. III-16 (1975) (reporting data for Massachusetts and Rhode Island).

**C. The State's Proposed Rule Would Deprive Individuals of Any Ability to Protect Their Privacy in Their Homes and As a Result Would Create an Extraordinary and Pervasive Sense of Personal Insecurity**

The insecurity that arises from such a rule is visited upon the entirely innocent and upon persons whose homes are never, in fact, searched. It condemns everyone who lives with others to the constant prospect that the government can invade their privacy. Any occupant has the absolute right to admit the government to search the premises despite the objection of another resident – indeed, despite the objection of *all* the other residents. The search, when it occurs, will very likely intrude into our most private spaces because the State's rule would permit the police to search wherever there is "common authority" over the premises. This would include rooms that are open to the public. Mr. Randolph's rooms was and is not open to the public, Mrs. Randolph claimed that the rooms to be his. if she claimed the rooms to be theirs then it would fall under common

authority. Why did the police not ask to search *her* room, for she has authority over that premises, not over the premises of her soon to be ex husband.

"[I]f the Fourth Amendment means anything, it means that the police may not undertake a warrantless search of defendant's property after he has expressly denied his consent to such a search. Constitutional rights may not be defeated by the expedient of soliciting several persons successively until the sought-after consent is obtained." Pet. App. 13a (quoting *Lawton v. State*, 320 So. 2d 463, 465 (Fla. App. 1975)).

In effect, the State proposes to constitutionalize a principle that we routinely reject even in childrearing – that if you want something but are told "no," you can just ask the other parent. Such a rule – which places every person's personal privacy in the hands of the least discreet or most ignorant member of the household – is antithetical to the protection afforded to persons in their homes. The state of Georgia was acting like a child who was not getting what they wanted, so they asked another person, until they gained the answer they wished for.

#### **D. The State's Proposed Rule Serves No Substantial Law Enforcement Interest**

The Police could have easily obtained enough information to secure a warrant. Mrs. Randolph could have easily went to the respondent's bedroom and brought the drugs to the police without them ever having to enter the residence. The sad part is " no reason is offered for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to an impartial magistrate." *Johnson v. United States*, 333 U.S. 10, 15 (1948). There is no inconvenience in protecting the state from having another incident like this happen again.

By contrast, there is no evidence that legitimate law enforcement concerns require the substantial further step of finding valid "consent" in the face of a clear objection by a person with a privacy interest in the premises.

"Had [respondent's wife] simply avoided any verbal exchange with police about consent and elected instead to physically retrieve the straw with white residue on it from the upstairs bedroom where it had been in plain view, those voluntary actions would have been constitutionally permissible under [*Coolidge v. New Hampshire*, 403 U.S. 443 (1971)]."

Nor is it correct that "giving effect to an occupant's consent may be necessary to avert destruction of contraband by the nonconsenting occupant" (U.S. Br. 22).

## **II. There Is No Merit to the State's Argument That This Court's Third Party Consent Precedents Compel the Reversal of the Ruling below**

### **A. The State Misreads This Court's Decision in *Matlock***

"That assertion misunderstands the Court's reference to "common authority," which instead described the class of persons who presumptively have the authority to consent because they themselves are occupants of the property to be searched. ..

"...who possessed common authority over *or other sufficient relationship* to the premises or effects sought to be inspected." 415 U.S. at 171 (emphasis added).

Such a relationship would presumably include, for example, a house sitter or long-term guest, individuals who have no "common authority" with the actual property owners. If such a person decides to admit the police, that decision will be effective except with respect to other occupants who state an objection.

When one occupant relinquishes control to another, the latter has the right to admit others to the premises "in his own right." What the State cannot establish – because

*Matlock* does not suggest it – is that an occupant’s "own right" to admit others overrides the express objection of his co-occupants. Mr. Randolph never gave up control of the premises. He was present to deny the officer to search his home. Since Mrs. Randolph did allow it though, so her control over rode that of her husband the primary resident, and that of the homeowners who also denied the officers to search the home. she was only there to get her remaining property that was hers (personal effects).

**B. There Is No Source for the Supposed Right of One Occupant to Admit the Police to Search a Home over the Objection of a Co-Occupant**

The State’s claim that one occupant may override the Fourth Amendment objections of all the others is insupportable for the further reason that it completely fails to identify any source for that supposed right. Such an extraordinary power must be rooted in *something*. The power to override a vital constitutional protection cannot be conjured from thin air. No one has the right to override another person's constitutional rights, as Mrs. Randolph did with Mr. Randolph's rights. The court explain that prior precedent established that one who has common authority and gives consent over the resident who is absent in the given circumstances. According to the state, the wife has a superior authority over her husband to allow access to the home.

**1. The Common Law of Property Does Not Support the State’s Position**

The court said in *Singer v. United States*, 380 U.S. 24, 34-35 (1965) "The ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right." *Rakas v Illinois*. The court made clear that common authority is

not derived from property law. The court has held that the fourth amendment protects a person's personal privacy, which has nothing to do with property interests or allow access to the premises. The right to privacy lies with the individual, not with the belongings that may be seized.

## **2. There Is No Basis for the State's Reliance on a Supposed Social Understanding That One Occupant May Admit Guests Over the Objection of the Others**

There is an understanding among those who live together, that each may invite a guest in over any objection from the other party. On the contrary, no one has the expectations that a cohabitant, over their objections, allows a guest into their residence, let alone allow the guest to sift through their belongings.

As Justice Kennedy has explained, there is thus a "social custom" that those with property rights over the residence "will exercise [their] discretion to include or exclude others for the guests' benefit," and "where these social expectations exist they are sufficient to create a legitimate expectation of privacy, even in the absence of any property right to exclude others." *Minnesota v. Carter*, 525 U.S. 83, 101 (1998) (emphasis added).

## **CONCLUSION**

We believe Mr. Randolph's Fourth Amendment Right was clearly violated by the search of his residence by the police on July 6, 2001. The State can use *Matlock* all it wants but there are clear differences that mean that it has no bearing on the case at hand. Furthermore, this court has approved searches on the basis of "third party consent" *only*

when the individual has voluntarily relinquished his right to exclude the police. This Mr. Randolph did as is evident by the fact that he was there while the search was taking place. Also, it is possible that Mrs. Randolph showed the police to Randolph's room out of spite, to retaliate against him for their marital problems. Also, if the ruling was to go in favor of the state, it would deprive an individual of having privacy in their own home because it would mean that anyone (such as a guest) could invite anyone else into their home without their consent, thereby, making the true purpose the fourth amendment meaningless. As it stands right now, the police could have easily obtained enough information from other sources close to Mr. Randolph, to obtain a warrant, thereby conducting a legal search of the residence. There is absolutely no reason why the police could not first contact a judge and secure such a warrant, unless of course they simply did not want to.

We believe the ruling the Supreme Court of Georgia should be affirmed.

Respectfully submitted,

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