

## Who Can Just Say “no” to a Consent Search? By: Lance Hester; May 2006

*Held: ...a physically present co-occupant's stated refusal to permit entry renders warrantless entry and search unreasonable and invalid as to him.*

One of my favorite doormats is displayed at the entryway of a Pierce County Deputy Prosecutor's office. It is brown and drab. But its stencil-style black letters read, “Come Back When You Have a Warrant.”

Of course, whenever I see something like that my mind immediately races through the dozens of scenario that excuse officers from the requirement to have a warrant if they want to search a person's home. For instance, “knock and talk” procedures are often used; there are published lists of “exigent circumstances” that will legally gain officers entry as well. And every defense attorney's favorite – the “consent search.”

Nevertheless, the Fourth Amendment is still part of the U.S. Constitution, and despite the seemingly always expanding list of exigencies, the U.S. Supreme Court recently published its opinion in a matter related to a case in which the officers received mixed messages regarding a “consent search.”

In Georgia v. Randolph, 126 S.Ct. 1515, March 8, 2006, Justice Souter penned an opinion that discussed facts that were, surprisingly, of first impression.

After Scott and Janet Randolph separated, Janet took off to Canada with their child. A few months later, she and the child returned. Shortly thereafter, the cops were at the house due to Janet's concerns. While the officers were there, Janet complained to them about her husband's drug use, and volunteered that there were “items of drug evidence” in their home. One of the officers asked Scott whether he could search the house and Scott “unequivocally refused.” Id. at 1519. Janet, on the other hand, “readily” gave her consent to search – following Scott's denial. They found cocaine and additional evidence of drug use. Scott lost his trial court suppression motion. At trial, the court ruled that “Janet Randolph had common authority to consent to the search.” Id. The appellate court and state supreme court reversed the trial court's ruling, and thus, the U.S. Supreme Court's holding was one sustaining those decisions.

Justice Souter's opinion is lengthy and worth the read. Ultimately, it outlines several areas related to allowable and disallowable searches. He draws fine lines and distinguishes the facts from well-established case law from the Randolph case.

The opinion also acknowledges the importance of recognizing the "customary expectation of courtesy or deference" when considering the reasons temporary houseguests have a legitimate expectation of privacy. The court acknowledged that "it is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying, 'stay out.'" And it went on to say..... "no sensible person would go inside under those conditions." Id. at 1522.

Having stated much about the policy implications related to the above, the court ultimately held, that under the factual circumstances of the Randolph case, "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant." Id. at 1528.

End

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