



## DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 306

March 27, 2006

### PHYSICALLY PRESENT RESIDENT CAN NEGATE CO-TENANT'S CONSENT

**Reference:** Georgia  
v.  
Scott Fitz Randolph

United States Supreme Court  
No. 04-1067

\_\_\_\_\_ U.S. \_\_\_\_\_  
March 22, 2006

### **FACTS:**

Janet Randolph separated from her husband, Scott, and went to stay with her parents in Canada. She returned to the family residence about two weeks later. It is unknown if she returned for a reconciliation or to retrieve her possessions. At any rate, several days after she returned, she called police to complain about a domestic dispute and to report that her husband took her son away.

When police arrived, Janet told them that her husband was a cocaine user whose habit had caused financial problems. Shortly after police arrived, Scott returned and explained that he had removed the child to a neighbor's house out of concern that his wife might take the boy out of country again. He denied cocaine use and countered that it was his wife who abused drugs and alcohol. Janet responded that it was Scott who used drugs and said there were items of drug evidence in the house. A police officer asked Scott for permission to search the house, which he unequivocally refused.

The officer turned to Janet for consent to search, which she readily gave. She led the officer to an upstairs bedroom that she identified as Scott's. The officer noticed a section of a drinking straw with a powdery residue suspected as being cocaine. The officer left the residence to get an evidence bag and to call the District Attorney's office, which instructed him to stop the search

and apply for a warrant. When the officer returned to the residence, Janet withdrew her consent. The officer took the straw, along with both Janet and Scott, to the police station.

A search warrant was issued and executed at the residence. Further evidence of drug use was seized and used against Scott; he moved to suppress. He argued that his wife was unauthorized to give her consent over his express refusal.

**ISSUE:**

If a physically present inhabitant refuses consent for a police search, will the consent of a co-tenant suffice to allow the search?

**HELD:** No--a physically present co-occupant's stated refusal to permit entry prevails.

**REASONING:**

1. A warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to police by another resident. Scott Randolph's refusal is clear and nothing in the record (emergency, prevent domestic violence, etc.) justifies the search on grounds independent of Janet Randolph's consent.

2. It would needlessly limit the capacity of police to respond to ostensibly legitimate opportunities in the field if reasonableness required police to take affirmative steps to find a (non-present) potentially objecting co-tenant before acting on the permission they had already received. The co-tenant's consent is good against the absent, non-consenting resident. Shared tenancy is understood to include an "assumption of risk" on which police officers are entitled to rely. A potentially objecting tenant cannot be removed from the entrance for the sake of avoiding a possible objection.

3. No question has been raised, or reasonably could be, about the authority of police to enter a dwelling to protect a resident from domestic violence. The undoubted

right of police to enter in order to protect a victim,  
however has nothing to do with the question in this case.

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