Georgia v. Randolph: A Murky Refinement of the Fourth Amendment Third-Party Consent Doctrine

C. Dan Black*

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I. INTRODUCTION

The abuses and grievances inflicted by King George III upon the American colonists brought about the ratification of the Fourth Amendment to the United States Constitution.[1] Despite the Amendment's long-standing protection against the government's unreasonable, intrusive reach,[2] law enforcement continues to test the Amendment's protective limits like a child stretching her parents' rules.[3]

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1. *See* Eric Schnapper, *Unreasonable Searches and Seizures of Papers*, 71 VA. L. REV. 869, 915 (1985) (discussing England's treatment of the early colonists persuading the states to ratify the Fourth Amendment).

2. *See* U.S. CONST. amend. IV.

3. *See* Sean R. O'Brien, *United States v. Leon and the Freezing of the Fourth Amendment*, 68 N.Y.U. L. REV. 1305, 1322-23 (1993) (discussing how law enforcement constantly tests the limits of the Fourth Amendment).

Occasionally, the Supreme Court is forced to reign in the abuses[4] and re-instill the timeless idiom that "a man's home is his castle" and even "[t]he poorest man may in his cottage bid defiance to all the forces of the Crown."[5]

In *Georgia v. Randolph*, the United States Supreme Court wrestled with Fourth Amendment protection in the context of a warrantless police search of an estranged couple's home.[6] In the past, the Court has held that an occupant of a residence can consent to a warrantless police search if the co-occupant (against whom the evidence is sought) is not present or is silent.[7] The *Randolph* Court held, however, that even if one occupant of a residence consents to the search, it is a violation of the Fourth Amendment to search a residence if a present co-occupant expressly objects.[8]

The *Randolph* decision was correct. A person against whom evidence is sought has every right under the Fourth Amendment to resist a warrantless police search.[9] Law enforcement is, and should be, required to obtain a warrant prior to searching a residence, absent carefully delineated exceptions.[10] Consent by a co-occupant is irrelevant in light of a present occupant's express objection, and is thus not valid consent.[11] However, in *Randolph* the Court unnecessarily restricted the ability of a person to object only to situations when he is present "at the door."[12] The physical location of a person at the time of his objection should be irrelevant, and a person's express objection to search given to law enforcement should be dispositive.

This note begins by providing a brief history of the development of Fourth Amendment jurisprudence in this country. It then discusses the factual and procedural history of *Randolph*, and its six separately written opinions. Finally, this note analyzes *Randolph's* interpretation of the third-party consent doctrine in relation to the Fourth Amendment.

II. HISTORICAL BACKGROUND

The Fourth Amendment to the United States Constitution provides that all people in the United States have a right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . and no Warrants shall issue,

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4. *See infra* Part III.B and accompanying note 67 (explaining that the Court granted certiorari in response to a number of lower court cases that upheld warrantless police searches based on an occupants consent against a co-occupants objection).

5. Georgia v. Randolph, 126 S. Ct. 1515, 1524 (2006) (citing Miller v. United States, 357 U.S. 301, 307 (1958)).

6. *See id.* at 1519.

7. *See id.* at 1527.

8. *Id.* at 1528.

9. *See* U.S. CONST. amend. IV.

10. *Randolph,* 126 S. Ct. at 1520.

11. *Id.* at 1528.

12. *See id.* at 1527.

but upon probable cause . . . ."[13] For the framers, this amendment instilled rights in the people to which the English crown rarely paid homage.[14] Although first only applicable to federal agencies, the Fourth Amendment protection was later extended to cover state action through the Fourteenth Amendment.[15]

Until the mid-twentieth century, courts regarded the Fourth Amendment as protecting property, including tangible items such as homes and possessions.[16] However, with the 1967 decision, *Katz v. United States*, the Supreme Court began to regard the Fourth Amendment as protecting not only property, but also people.[17] The decision was a substantial paradigm shift.[18] The Court has since interpreted the Fourth Amendment by providing the basic rule that law enforcement's search without a valid warrant issued by an impartial magistrate[19] is per se unreasonable.[20]

Although there has been some discussion as of late regarding the erosion of this per se rule,[21] the United States Supreme Court continues to acknowledge a few carefully drawn exceptions.[22] Typically referred to as "exigent circumstances," these exceptions include inter alia: incident to an arrest,[23] hot pursuit,[24] imminent

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13. U.S. CONST. amend. IV.

14. *See* George Thomas III, *Terrorism, Race and a New Approach to Consent Searches*, 73 MISS. L.J. 525, 553 (indicating that King George III's writs of assistance led to the adoption of the Fourth Amendment). *See also* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (declaring the abuses and usurpations of Britain an affront to the fundamental, inalienable rights of every person); Andrew E. Taslitz, *Respect and the Fourth Amendment*, 94 J. CRIM. L. & CRIMINOLOGY 15, 16 (2003) (describing the Fourth Amendment as "a right . . . of central importance . . ." demanded by the people as a condition precedent to the Constitution's ratification); Schnapper, *supra* note 1, at 915.

15. *See* Mapp v. Ohio, 367 U.S. 643, 654-55 (1961).

16. *See* Ric Simmons, *From* Katz *to* Kyllo*: A Blueprint for Adapting the Fourth Amendment to Twenty-First Century Technologies*, 53 HASTINGS L.J. 1303, 1307 (2002).

17. Katz v. United States, 389 U.S. 347, 352-53 (1967) (holding that Fourth Amendment protection extends not just to tangible property; even a person in a telephone booth has a reasonable expectation of privacy that his conversation can only be reached by law enforcement through a valid warrant from an impartial magistrate).

18. *See* Simmons, *supra* note 16, at 1307-08.

19. *See* Coolidge v. New Hampshire, 403 U.S. 443, 450 (1971) (holding that a warrant must be issued by an impartial, detached magistrate rather than a district attorney actively involved in the investigation); *Katz*, 389 U.S. at 356-57 (holding that when officers use restraint when conducting a warrantless search, the search is unreasonable).

20. *See* Florida v. White, 526 U.S. 559, 568 (1999) (quoting *Coolidge*, 403 U.S. at 453-55).

21. *See* Susan R. Klein, *Identifying and (Re)Formulating Prophylactic Rules, Safe Harbors, and Incidental Rights in Constitutional Criminal Procedure*, 99 MICH. L. REV. 1030, 1038-39 (2001) (discussing the erosion of the per se rule against warrantless police searches).

22. *See id.* at 1038.

23. *See Coolidge*, 403 U.S. at 456 (indicating that for a warrantless search to be upheld, it must be "substantially contemporaneous" and limited to the "immediate vicinity of the arrest").

24. *See* Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 298-99 (1967).

danger,[25] safety of police,[26] spoliation of evidence,[27] and consent.[28] This means that if law enforcement is faced with circumstances constituting one of these exceptions, a warrantless search by the officers may be upheld.[29]

Of the warrantless search exceptions enumerated above, law enforcement officers may seek voluntary consent[30] from the person "against whom the evidence is sought."[31] In regard to the search of a dwelling, officers may also obtain consent from a person with common authority over the premises through mutual use of the property, often referred to as third-party consent.[32]

Soon after *Katz*, the Supreme Court decided the leading third-party consent cases: *United States v. Matlock* and *Illinois v. Rodriquez*. These two cases held, respectively, that even though the defendant sat mere feet away from his residence in a police squad car[33] or was asleep in a room of his residence,[34] the consent of each defendant's co-occupant to search the residence was sufficient to meet the requirements of the Fourth Amendment. The Court thus held that each defendant's co-occupant had common authority through mutual use of the premises.[35] Consequently, the Court reasoned that when a person shares a residence with another, whether a spouse,[36] a significant other,[37] or a relative,[38] the person has "assumed the

25. *See* Mincey v. Arizona, 437 U.S. 385, 392 (1978) (finding that law enforcement's warrantless search at a time of emergency was not barred by the Fourth Amendment).

26. *See* Chimel v. California, 395 U.S. 752, 762-64 (1969) (holding that searches pursuant to the safety of police exception must be contemporaneous with the arrest).

27. *See* Illinois v. McArthur, 531 U.S. 326, 332 (2001) (upholding law enforcement's warrantless restraint of a defendant when destruction of the evidence was likely).

28. *See* Georgia v. Randolph, 126 S. Ct. 1515, 1520 (2006) (citing Illinois v. Rodriguez, 497 U.S. 177, 181 (1990)).

29. *See* Brigham City, Utah v. Stuart, 126 S. Ct. 1943, 1947 (2006).

30. A wealth of discussion has taken place regarding what constitutes *voluntary* consent. *See, e.g.*, Schneckloth v. Bustamonte, 412 U.S. 218, 248-49 (1973) (holding that "voluntariness" of a consent search should be determined by analyzing all circumstances rather than by proof of a person's awareness regarding his or her right to refuse).

31. *Randolph*, 126 S. Ct. at 1520.

32. *See, e.g., id.* at 1520-21 (citing United States v. Matlock, 415 U.S. 164, 170 (1974) (noting that the defendant's live-in girlfriend's consent was sufficient because her common authority was not derived from the law of property, but rather the mutual use of property)).

33. *Matlock*, 415 U.S. at 166.

34. Illinois v. Rodriguez, 497 U.S. 177, 179 (1990).

35. *See id.* at 181-82, 188-89; *Matlock*, 415 U.S. at 168-71.

36. *See* Coolidge v. New Hampshire, 403 U.S. 443, 487-90 (1971).

37. *See Matlock*, 415 U.S. at 175-76 (holding that in the defendant's absence, his live-in girlfriend's consent to search was sufficient to meet Fourth Amendment requirements).

38. *See* Frazier v. Cupp, 394 U.S. 731, 740 (1969) (finding that the defendant's cousin could consent to the search of a jointly used duffel bag because, in the defendant's absence, he "assumed the risk that [his cousin] would allow someone else to look inside.").

risk" that in the person's absence[39] the co-occupant may allow a search that is adverse to that person's interests.[40]

The Supreme Court has logically refused to extend this assumption of the risk to situations where the person purportedly giving consent lacked common authority based on mutual use of property.[41] In *Chapman v. United States*, for example, a landlord's consent for law enforcement to search a rented house was held insufficient under the Fourth Amendment.[42] Similarly, in *Stoner v. California*, the Supreme Court held that a hotel clerk's consent to search an occupied room was invalid.[43] In both cases, the Supreme Court established the foundation for its subsequent decision in *Matlock*, where it restricted third-party consent to those persons with common authority over property through "mutual use of the property . . . ."[44]

Setting the stage for *Randolph*, the Supreme Court's decision in *Minnesota v. Olson* affirmed a Minnesota Supreme Court decision that found a violation of the Fourth Amendment when police entered a residence without a warrant when the defendant was an overnight guest at the residence.[45] The United States Supreme Court held that the defendant's status as an overnight guest was "enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable."[46]

III. HISTORY OF RANDOLPH

A. *Facts*

Scott and Janet Randolph, a married couple, resided together in a house in Americus, Georgia[47] until May 2001.[48] In late May 2001, the couple separated and

39. *See Matlock*, 415 U.S. at 170-71; Georgia v. Randolph, 126 S. Ct. 1515, 1527 (2006) (distinguishing the defendants in *Matlock* and *Rodriguez* from Scott Randolph because the defendants in *Matlock* and *Rodriguez* were not present and objecting at the time of the police search).

40. *See, e.g.*, *Matlock*, 415 U.S. at 171.

41. *See id.* at 172 n.7.

42. Chapman v. United States, 365 U.S. 610, 617-18 (1961).

43. Stoner v. California, 376 U.S. 483, 490 (1964).

44. *Matlock*, 415 U.S. at 171 n.7.

45. Minnesota v. Olson, 495 U.S. 91, 94-95, 99 (1990) (reasoning that "it is unlikely that [the host] will admit someone who wants to see or meet with the guest over the objection of the guest.").

46. *Id.* at 96-97.

47. Georgia v. Randolph, 126 S. Ct. 1515, 1519 (2006).

48. *Id.*

Janet left with the couple's child to stay in Canada.[49] Later the same year, Janet and the child returned to Americus.[50]

On July 6, 2001, Janet contacted law enforcement to report that Scott had left with the child that morning.[51] When the police arrived, Janet complained that her estranged husband abused cocaine and specifically mentioned the existence of drug-related evidence in the house.[52] Soon after the police's arrival, however, Scott returned to the house.[53] After retrieving the child, the police sought consent from Scott to search the couple's residence because of Janet's allegations of Scott's illicit drug use.[54] Scott unequivocally denied the request.[55] The police sergeant then turned to Janet,[56] who gave consent and led the sergeant to Scott's room[57] where he collected a straw covered in a white substance suspected to be cocaine residue.[58] Scott and Janet were arrested and subsequently indicted for possession of cocaine.[59]

B. *Procedure*

At trial, Scott moved to suppress the evidence obtained by the officers as products of a warrantless search.[60] Scott unsuccessfully argued that Janet's consent was not sufficient to overcome his express objection to the warrantless search.[61] The trial court thereby denied his motion to suppress, finding that Janet Randolph had "common authority to consent to the search."[62] After being granted an interlocutory appeal by the Georgia Appellate Court,[63] Scott was able to successfully argue a reversal of the trial court denial.[64] The Georgia Supreme Court later affirmed the

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49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *See* State's Brief Opposing Defendant's Motion to Suppress, State v. Randolph, No. 01-R-699, 2005 WL 1635852, at *17 (Ga. Super. Ct. Oct. 3, 2002); Brief in Support of Defendant's Motion to Suppress Illegally Obtained Evidence, State v. Randolph, No. 01-R-699, 2005 WL 1635852, at *7 (Ga. Super. Ct. Jan. 25, 2002).
60. *Randolph*, 126 S. Ct. at 1519.
61. *See* Order of the Court, State v. Randolph, No. 01-R-699-P, 2005 WL 1635852, at *23-24 (Ga. Super. Ct. October 17, 2002).
62. *Randolph*, 126 S. Ct. at 1519.
63. *See* Randolph v. State, 264 Ga. App. 396, 397, 590 S.E.2d 834, 836.
64. *See id.* at 396, 590 S.E.2d at 835.

appellate court's decision by a narrow 4-3 majority.[65] The State Supreme Court held that "'consent to conduct a warrantless search . . . by one occupant is not valid in the face of the refusal of another occupant who is physically present . . . .'"[66] Georgia sought review by the United States Supreme Court, which granted certiorari to resolve a split of authority among the circuits and states regarding whether a consent by one co-occupant to search is valid despite the objections of another, present co-occupant.[67]

IV. THE DECISION

A. *The Majority*

Justice Souter led *Randolph's* relatively narrow 5-3 majority,[68] holding that under the Fourth Amendment, a physically present occupant's explicit denial of consent to search his residence is "dispositive as to him" despite any co-occupant's consent.[69] The Court distinguished *Randolph* from prior third-party consent cases such as *Rodriguez* and *Matlock* because Scott Randolph was not only present, but also expressly voiced his objection to the police search.[70] The Court's analysis emphasized the distinction between: (a) the objection of a person standing at the door; and (b) a person asleep in a bedroom or handcuffed in a nearby squad car.[71] Noting the general rule that "warrantless entry of a person's house [is] unreasonable *per se*,"[72] the Court focused its analysis on the "'jealously and carefully drawn' exception"[73] of voluntary consent by one with authority.[74]

As a case of first impression, the majority in *Randolph* noted that the Court had come closest to the instant case in *Olson*, where an overnight guest had a "legitimate expectation of privacy . . . because 'it is unlikely that [the host] will admit someone . . . over the objection of the guest.'"[75] *Olson's* foundation thereby enabled the *Randolph* Court to construct an analysis of what it termed customary "social practice."[76]

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65. *See* State v. Randolph, 278 Ga. 614, 615, 604 S.E.2d 835, 837 (2004).

66. *Randolph*, 126 S. Ct. at 1519 (2006) (quoting *Randolph*, 278 Ga. at 614, 604 S.E.2d at 836).

67. *Id.* at 1520.

68. *See id.* at 1518, 1531, 1541 (Justice Alito abstained from the decision).

69. *Randolph*, 126 S. Ct. at 1528.

70. *Id.* at 1520, 1527 (distinguishing *Matlock* and *Rodriquez* because the defendants in those cases did not express a present objection to a police search).

71. *Id.* at 1527.

72. *Id.* at 1520 (citing Payton v. New York, 445 U.S. 573, 586 (1980)).

73. *Id.* (quoting Jones v. United States, 357 U.S. 493, 499 (1958)).

74. *See id.*

75. *Id.* at 1522 (quoting Minnesota v. Olson, 495 U.S. 91, 99 (1990)).

76. *See id.* at 1523.

In general, according to the majority, a person knocking at the door of a shared premises must not enter if an occupant objects, even with the express permission from a co-occupant;[77] rather, the entry would have to be accomplished by "resolution . . . through voluntary accommodation."[78] The Court then extended this analogy to law enforcement's seeking of consent to search without a warrant.[79] The majority rejected any validity of a third party's consent to search over a potential defendant's express objection, stating that "[a] co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant . . ."; thus concluding that in such a situation "a police officer [has] no better claim to reasonableness in entering than the officer would have in the absence of any consent at all."[80]

Therefore, the United States Supreme Court concluded that with other possible legal alternatives available to law enforcement,[81] Janet Randolph's consent against Scott Randolph's present and expressed objection was not sufficient to validate police invasion of a person's home[82] and the warrantless police search of the Randolph home was held unconstitutional. Consequently, the U.S. Supreme Court affirmed the decision of the Georgia Supreme Court which reversed the Sumter County Superior Court's denial of Scott's motion to suppress.[83]

B. *Concurring: Justice Stevens*

Concurring with the majority, Justice Stevens believed that at the time of the Fourth Amendment's passing, a wife's consent would have been irrelevant because as the "master of the house," a husband's consent was the only one of value.[84] Justice Stevens maintained that the Court's decision championed equality in the sexes, because the consent of one spouse cannot trump the denial by the other.[85]

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77. *See id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *See id.* at 1524-25 (citing Coolidge v. New Hampshire, 403 U.S. 443, 486 (1971)) (delineating a third party's retrieval of evidence obtaining sufficient information from a third party for law enforcement to obtain a valid warrant from an impartial magistrate as an alternative to law enforcement).

82. *Id.* at 1528.

83. *Id.*

84. *Id.* at 1529 (Stevens, J., concurring).

85. *Id.* at 1529.

C. *Concurring: Justice Breyer*

Justice Breyer distinguished the Court's somewhat formalistic holding.[86] Because the Fourth Amendment uses broad, general terms such as "*unreasonable* search and seizure,"[87] Justice Breyer surmised that broad Court decisions lacking bright-line rules would logically follow.[88] Following long-standing precedent, he then undertook a "totality of the circumstances" analysis, filling in the gaps of the majority opinion.[89] A court in this type of analysis typically looks at all the surrounding circumstances regarding a police search to determine if the search was justified.[90] According to Breyer, there were no compelling reasons to validate the warrantless police search in the instant case; however, he believed any change in the circumstances would significantly change the result such as "where the objector is not present" but somehow objecting.[91]

D. *Dissent: Chief Justice Roberts*

Chief Justice Roberts, in his first written dissent since joining the Supreme Court,[92] discredited the majority's holding as providing random protection under the Fourth Amendment.[93] His dissent expressed a lack of justification for evaluating *Randolph* differently from earlier third-party consent cases.[94] Principally, the Chief Justice found the case which the majority distinguished to be acutely applicable.[95] He reasoned that in both *Rodriguez* and *Matlock* it could be inferred that the defendants would have objected to the police searches; nevertheless, the Court upheld the consent of the co-occupants in those cases as sufficient under the Fourth Amendment to search the premises, and the Chief Justice argued the same should have been done in the instant case.[96] His dissent contended that the third-party consent cases that have come before the Court, including *Randolph*, have involved defendants with a diluted expectation of privacy because they have assumed the risk that their co-occupants could allow entry of those adverse to their interests.[97]

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86. *See id.* (Breyer, J., concurring).

87. *Id.* (quoting U.S. CONST. amend. IV) (emphasis added).

88. *Id.*

89. *See id.* at 1529-30.

90. *See id.* at 1530.

91. *Id.* (for example where the objector is not on the premises).

92. David L. Hudson Jr., *Fourth Amendment Case Shows Cracks in the Court—Chief Justice Calls Majority's Ruling 'Random' and 'Arbitrary'*, 5 NO. 12 A.B.A. J. E-REPORT 2 (2006).

93. *Randolph*, 126 S. Ct. at 1531 (Roberts, C.J., dissenting).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 1532 (quoting United States v. Matlock, 415 U.S. 164, 171 (1974)).

Venturing into the realm of hypotheticals, his dissent then dove into an analysis of a domestic dispute situation where an abused wife would consent to a search over the objection of her abuser husband, but the police, bound under the majority opinion, are required to obtain a warrant before entering.[98] Based on this scenario, the Chief Justice posed a question: What happens when the police leave and "the door clicks shut?"[99] The Chief Justice believed that in a domestic dispute hypothetical such as this, a husband could "attend to both . . ." destruction of the evidence and infliction of retribution "in short order."[100]

Next, the Chief Justice debunked the Court's analysis of supposed social customs, finding that "possible [social] scenarios are limitless. . . . [and] not a promising foundation on which to ground a constitutional rule. . . ."[101] Instead, his dissent favored an actual rule, that bore at least some "relation to the privacy protected by the Fourth Amendment"[102] rather than an ad-hoc "case specific" holding.[103]

E. *Dissent: Justice Scalia*

In addition to joining the Chief Justice's dissent, Justice Scalia penned a scathing critique of Justice Steven's attempt to critique originalism and countered Justice Steven's "panegyric to the *equal* rights of women . . . ."[104] Justice Scalia believed that giving women the ability to consent to a police search would not change the meaning of the Constitution under the Fourth Amendment any more than expanding property interests protected under the taking clause.[105] He concluded that the majority is not a better champion of gender equality, because under "the majority's regime . . . both sexes can veto each other's consent . . . ," while in the dissent's view neither can.[106] Instead, Justice Scalia feared that the Court has opened the door to domestic violence, while slamming the door on consensual police searches.[107]

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98. *See id.* at 1537.

99. *Id.*

100. *Id.*

101. *Id.* at 1532.

102. *Id.* at 1536.

103. *Id.* at 1539.

104. *Id.* at 1540 (Scalia J., dissenting) (emphasis in original).

105. *See id.* (comparing the Fourth and Fifth Amendments in relation to the instant case; in both situations the Constitution remains unchanged, despite expanding property interests and women's rights).

106. *Id.* at 1541.

107. *See id.* (fearing that the Court's decision will give men the power to prevent women from allowing police entry into the home, giving men the power "Justice Stevens disapprovingly presume[d] men had in 1791").

F. *Dissent: Justice Thomas*

Justice Thomas wrote the last dissent, in which he contended that *Coolidge* should control the instant case because, like Mrs. Coolidge, Janet Randolph was trying to voluntarily cooperate with the police by turning over evidence and any distinction drawn by the Court was "inconsistent with *Coolidge* and unduly formalistic."[108] Justice Thomas believed that the Court's decision would have a chilling effect on people's ability or willingness to help law enforcement.[109] Quoting *Coolidge*, the justice concluded that "'it is no part of the policy of Fourth and Fourteenth Amendments to discourage citizens from aiding to the utmost . . . in the apprehension of criminals.'"[110]

V. ANALYSIS

The *Randolph* court aptly interpreted the Fourth Amendment protection against unreasonable searches and seizures in the present case for three reasons. First, consent by a person with common authority to search shared premises is reasonable.[111] Second, law enforcement is not unduly burdened by being required to secure a warrant.[112] Third, a person may assume the risk that a co-occupant will allow law enforcement to search in his absence, but certainly, no assumption exists when he is present and objecting.[113] Despite this, however, the Court was excessively formalistic in restricting a party's ability to object only when he is at the door.[114]

A. *Validity of Third-Party Consent*

The United States Supreme Court has upheld third-party consent to warrantless police searches for more than thirty years.[115] In light of the language of the Fourth Amendment, [116] it would seem clear that one who mutually uses shared property

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108. *Id.* at 1542-43 (Thomas, J., dissenting) (citing Coolidge v. New Hampshire, 403 U.S. 443, 485 (1971)).

109. *Id.* at 1542.

110. *Id.* (quoting *Coolidge*, 403 U.S. at 488).

111. *See id.* at 1518.

112. *See* Transcript of Oral Argument at 41, *Randolph*, 126 S. Ct. 1515 (2006) (No. 04-1067), 2005 WL 3112008.

113. *Cf.* United States v. Matlock, 415 U.S. 164, 170 (1974) (indicating that third-party consent to search shared premises is valid when the non-consenting party is absent).

114. *See Randolph*, 126 S. Ct. at 1531 (Roberts, C.J., dissenting).

115. *See Matlock*, 415 U.S. 164 (establishing the foundation of the third-party consent doctrine).

116. U.S. CONST. amend. IV (employing a standard of reasonableness to searches and seizures).

should have common authority sufficient to be able to *reasonably* consent to a police search.[117] None of the six separate opinions of *Randolph* even insinuated a desire to erode the ability of a co-occupant to consent to such a search.[118] *Randolph* illustrates that the third-party consent doctrine is still well rooted in the Fourth Amendment jurisprudence of this country.[119]

B. *Ease in Securing a Warrant*

The founders added the Fourth Amendment to the constitution for a reason.[120] When competently used, warrants are as useful a tool to law enforcement as a scalpel is to a skilled surgeon. Undoubtedly, law enforcement may, in certain exigent circumstances, bypass the warrant requirement of the Fourth Amendment.[121] But, as evident in years of precedent, when law enforcement conducts a warrantless search and lacks the precise required exigent circumstances, their lack of a warrant is like a surgeon with a rusty screwdriver. Both are invasive, both leave deep scars, and neither one is acceptable in light of this nation's modern jurisprudence.[122]

Warrants have become exceedingly easy to obtain.[123] Law enforcement can often obtain a warrant with a simple telephone call.[124] Certainly, in the instant case, the police in Americus could have used their cell phones or radioed in a warrant.[125] In any circumstance, law enforcement can first secure a residence and thereafter procure a warrant.[126] Here, Janet Randolph could have provided any necessary affidavit or could have retrieved the cocaine evidence herself, which the police could have used as evidence of probable cause sufficient for a magistrate to issue a search

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117. *See Randolph*, 126 S. Ct. at 1521.

118. *See Randolph*, 126 S. Ct. at 1515-43.

119. *See id.*

120. *See supra* note 1 and accompanying text.

121. *See Randolph*, 126 S. Ct. at 1524 n.6. *See also supra* notes 22-29 and accompanying text.

122. *See generally* Mincey v. Arizona, 437 U.S. 385, 393 (1978) (explaining that price efficiency "can never by itself justify disregard of the Fourth Amendment.").

123. *See generally* Justin H. Smith, *Press One for Warrant: Reinventing the Fourth Amendment's Search Requirement through Electronic Procedures*, 55 VAND. L. REV. 1591 (2002) (discussing the ease of obtaining an electronic warrant in some jurisdictions, including on the federal level through Fed. R. Crim. P. 41(c)(2)).

124. *See* Transcript of Oral Argument at 41, *Randolph*, 126 S. Ct. at 1515 (2006) (No. 04-1067), 2005 WL 3112008.

125. *See id.*

126. *See Randolph*, 126 S. Ct. at 1530 (Breyer, J., concurring) (noting that the officers could have easily secured the house while they procured a warrant); *but see id.* at 1537 (Roberts, C.J., dissenting) (worrying that police will be forced to leave and both the evidence and consenting occupant will be harmed).

warrant.[127] There appears to be absolutely no justification for law enforcement, absent meticulously prescribed exigent circumstances, to search a home without a warrant, especially when one occupant expressly objects.[128]

C. *Ability to Object to a Warrantless Police Search*

The risk assumed by an absent occupant of shared premises does not exist when he is present.[129] By sharing property with another, a person invites a dilution of his privacy.[130] Who hasn't lived with a person, whether a sibling, a roommate, or even a spouse, that hasn't had her personal space unreasonably breached in her absence? Dilution of privacy is a reality when living with another individual. However, when present, a person has every right and every capability to withstand an invasion of her privacy.[131] It should logically follow that a person should have the same ability when asserting her constitutionally protected rights against warrantless police searches. It is absurd to imagine that police can intrude on one's privacy, granted authority only by a co-occupant's consent, which by no means is superior to a contemporaneous objection by another co-occupant; indeed the dueling wishes of both parties functions as "[no] consent at all."[132]

D. *Irrationality of Location-Based Objection Analysis*

Although getting the case right on almost all counts, the *Randolph* Court was too formalistic in crafting its holding.[133] The majority's distinction between a valid objection of a person present at the door versus a silent person at the curb[134] was unnecessary. The required threshold question should not be where the person is located, whether near, on, or inside the premises; but should be whether the person objects. The case, too easily, allows law enforcement to bend the circumstances to their advantage by waiting for a potential objecting occupant to leave before securing a co-occupant's consent.[135] Should a hybrid of *Randolph* and *Matlock* arise where

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127. *See id.* at 1524.

128. *See id.*

129. *See id.* at 1527 (citing U.S. v. Matlock, 415 U.S. 164, 170 (1974)) (noting that *Matlock* did not extend its holding or the assumption of the risk to a present occupant, only an absentee).

130. *See id.* at 1533 (Roberts, C.J., dissenting) (illustrating the reduced expectation of privacy found inherent in the concept of sharing property).

131. *See id.* at 1523-24.

132. *See id.* at 1523.

133. *See id.* at 1539 (Roberts, C.J., dissenting); *id.* at 1543 (Thomas J., dissenting).

134. *Id.* at 1527.

135. *See id.* at 1539 (Roberts, C.J., dissenting). *See also* Brief for Petitioner, Georgia v. Randolph, 126 S. Ct. 1515 (2005) (No. 04-1067), 2005 WL 1429275, at *10; Brief for United States as Amicus Curiae Supporting Petitioner, Georgia v. Randolph, 126 S. Ct. 1515 (2005) (No. 04-1067),

the police detain a person in a squad car and that person vehemently objects to police entry into his home, any consent by a co-occupant should be irrelevant. The objecting party's rights, no matter his location, should be upheld. In such a situation, the police are not faced with any daunting task; rather, their simple subsequent step would be to secure a warrant.[136]

Because the Court restricted the ability of a potential defendant to object to a search based on his locale,[137] there is no doubt cases will arise as indicated above, placing the burden on lower courts to interpret *Randolph*. Predictably, the Supreme Court will soon be faced with considering similar facts and trying to resolve *Randolph's* random, location-specific holding.

VI. CONCLUSION

Georgia v. Randolph furnishes much needed refinement to the third-party consent doctrine in the United States. The case is a robust step in the right direction, helping to re-instill rights the founders deemed fundamental.[138] Now, if a person wishes to assert his rights, he has the ability to thwart the government's warrantless assault on his privacy.[139] No longer can a co-occupant, with no greater authority through property or constitutional law, permit police to attack another's rights.[140] It is astonishing that it has taken the Supreme Court this long to defend against the barrage of cases that have upheld such blatantly illegal searches.[141]

Randolph, however, leaves a door open wide enough to drive a squad car through. Law enforcement in this country is creative. Police have been known to abuse the system. Federal and local agents, at times, are able to bend the law to suit their needs. While not a behavior condoned by the Court, faced with a potentially objecting defendant, police can lay in wait. Upon the potential defendant's departure, the police, like a sub-Saharan predator, can pounce on a possibly consenting co-occupant. It is absurd that the validity of a police search hinges on the location or timing of the police inquiry.[142] Hopefully, the picture painted by *Randolph* is not a reflection of long-term Fourth Amendment law. If it is, COPS will soon bear resemblance to the Discovery Channel.

2005 WL 1453877, at *7.

136. *See* Transcript of Oral Argument at 41, *Randolph*, 126 S. Ct. at 1515 (2006) (No. 04-1067), 2005 WL 3112008. *See also supra* Part V.B.

137. *Randolph*, 126 S. Ct. at 1527.

138. *See supra* Part I.

139. *See Randolph*, 126 S. Ct. at 1528.

140. *See id.*

141. *See id.* at 1520 n.1 (citing various lower court decisions dating as early as 1977).

142. *See id.* at 1539 (Roberts, C.J., dissenting).