

# THE HOME AS THEIR CASTLE: AN ANALYSIS OF *GEORGIA V. RANDOLPH*'S IMPLICATIONS FOR DOMESTIC DISPUTES

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## I.

The Supreme Court's Fourth Amendment jurisprudence has traditionally recognized only a few, narrowly drawn exceptions to the rule that warrantless searches of private homes are *per se* unconstitutional. The exceptions include exigent circumstances,<sup>1</sup> search incident to arrest,<sup>2</sup> and consent.<sup>3</sup> In *Georgia v. Randolph*,<sup>4</sup> the Court considered whether to extend the doctrine of consent to include situations where two persons who share equal authority over the premises to be searched give conflicting responses to a police request for consent to search. At the heart of the Court's decision is the conflict between a desire to safeguard law enforcement's ability to effectively protect victims of domestic violence who share a home with their abusers and the duty to uphold an individual's right to be free from unreasonable police searches and seizures. In a decision written by Justice Souter,<sup>5</sup> the Court correctly recognized the sufficiency of options already available to the police to aid them in responding to complaints of domestic violence and refused to broaden the consent exception to the warrant requirement.

## II.

On the morning of July 6, 2001, Janet Randolph placed a call to the police from her home in Americus, Georgia, to report a domestic dispute

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<sup>1</sup> *Warden v. Hayden*, 387 U.S. 294 (1967).

<sup>2</sup> *Chimel v. California*, 395 U.S. 752 (1969).

<sup>3</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

<sup>4</sup> 126 S. Ct. 1515 (2006).

<sup>5</sup> Justice Souter was joined in the majority opinion by Justices Breyer, Ginsburg, Stevens, and Kennedy. Justices Breyer and Stevens also each wrote a concurring opinion. Chief Justice Roberts wrote a dissenting opinion, joined by Justice Scalia, who, along with Justice Thomas, each wrote a dissenting opinion. Justice Alito did not participate. This case comment will primarily address the opinions of Justice Souter and Chief Justice Roberts, and references to "the dissent" will refer to Chief Justice Roberts's opinion.

with her husband, Scott Randolph.<sup>6</sup> When police officers arrived at the Randolph home, Ms. Randolph informed them that her husband had left with the couple's son and that Mr. Randolph was a frequent cocaine user whose habit was causing financial and marital troubles.<sup>7</sup> Shortly thereafter, Mr. Randolph returned without the child, explaining that he had taken his son to a neighbor's house for safety and to prevent Ms. Randolph from taking the boy out of the country again.<sup>8</sup> The couple had been separated for several weeks, and Ms. Randolph had taken their son to stay with her parents in Canada, returning only three days earlier.<sup>9</sup> When questioned, Mr. Randolph denied he used cocaine, countering that his wife abused drugs and alcohol.<sup>10</sup>

Sergeant Murray, one of the officers on the scene, left with Ms. Randolph to retrieve the child, while the second officer remained in front of the home with Mr. Randolph.<sup>11</sup> On her return, Ms. Randolph renewed her complaints about her husband's cocaine use and informed the officers that there were items of drug paraphernalia and evidence of drug use inside the home.<sup>12</sup> In light of Ms. Randolph's statements, Sergeant Murray requested permission from Mr. Randolph to search the home, which Mr. Randolph, an attorney, unequivocally refused.<sup>13</sup> The officer next turned to Ms. Randolph, who not only consented to the search, but also volunteered to take the officers into the home and lead them to the evidence.<sup>14</sup>

Inside the house, Ms. Randolph led the officers upstairs to a bedroom that she identified as her husband's, where Sergeant Murray noticed a cut-off piece of a drinking straw coated with white powder that he suspected was cocaine.<sup>15</sup> Sergeant Murray returned to his car to retrieve an evidence bag and called to notify the district attorney's office, which instructed him to stop the search and obtain a warrant before proceeding any further.<sup>16</sup> After Sergeant Murray returned, Ms. Randolph withdrew her consent to the search.<sup>17</sup> The officers returned to the house to collect the straw and powder, arrested both Mr. and Ms. Randolph, and transported them to the police station.<sup>18</sup> After obtaining a search warrant, the police returned to the Randolph home and collected numerous drug-related items.<sup>19</sup> On the basis of the evidence

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<sup>6</sup> *Randolph*, 126 S. Ct. at 1519.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Randolph v. State*, 590 S.E.2d 834, 836 (Ga. Ct. App. 2003).

<sup>19</sup> *Id.*

seized, both before and after the search warrant was obtained, Scott Randolph was indicted for possession of cocaine.<sup>20</sup>

The trial court denied Scott Randolph's motion to suppress the seized evidence, holding that his wife had common authority to consent to a search of the home.<sup>21</sup> The Georgia Court of Appeals granted an interlocutory appeal to review the trial court's ruling<sup>22</sup> and reversed, holding that it was unreasonable for the police officers to search the premises in light of Scott Randolph's presence and nonconsent.<sup>23</sup> Expressing a preference for a clear, bright-line rule, the court declared that requiring police officers to obtain a warrant in the face of conflicting responses to a request for consent to search, in the absence of exigent circumstances, would not unduly hamper law enforcement and was necessary to protect the defendant's Fourth Amendment right to be free from unreasonable search and seizure.<sup>24</sup> While in her absence it can be presumed that one occupant has waived her right to privacy with regard to other co-occupants, "when police are confronted with an unequivocal assertion of that co-occupant's *Fourth Amendment* right, such presumption cannot stand."<sup>25</sup> The Georgia Court of Appeals held that although in the absence of evidence to the contrary it is valid to presume that one occupant has waived her right of privacy with regards to her co-occupants, here, given Mr. Randolph's undisputed objection, that presumption could not stand, and Ms. Randolph had no authority to waive her husband's right to be free from unreasonable searches.<sup>26</sup> On appeal, the Georgia Supreme Court agreed, holding that "consent to conduct a warrantless search of a residence given by one occupant is not valid in the face of the refusal of another occupant who is physically present at the scene to permit a warrantless search."<sup>27</sup>

### III.

The Supreme Court granted certiorari and affirmed.<sup>28</sup> While Fourth Amendment jurisprudence regards warrantless entry into a private home as generally per se unreasonable, it recognizes an exception and holds as valid searches conducted pursuant to the voluntary consent of an individual possessing authority over the premises.<sup>29</sup> This exception includes consent granted by third parties sharing common authority over the property when

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<sup>20</sup> *Id.*

<sup>21</sup> *Randolph*, 126 S. Ct. at 1519.

<sup>22</sup> *Randolph*, 590 S.E.2d at 836.

<sup>23</sup> *Randolph*, 126 S. Ct. at 1519.

<sup>24</sup> *Randolph*, 590 S.E.2d at 837.

<sup>25</sup> *Id.* at 838.

<sup>26</sup> *Id.*

<sup>27</sup> *State v. Randolph*, 604 S.E.2d 835, 836 (Ga. 2004).

<sup>28</sup> *Randolph*, 126 S. Ct. at 1519.

<sup>29</sup> *Id.* at 1520.

the person against whom the search is directed is absent<sup>30</sup> and consent by a person the police reasonably, though erroneously, believe is an occupant possessing proper authority.<sup>31</sup> The issue in *Randolph* was the applicability of this exception to a situation in which the police are faced with two conflicting responses to a request to search, with the person against whom the search is directed present and unequivocally refusing consent, while his co-occupant, also present, agrees to the search.

Writing for the majority in *Randolph*, Justice Souter declined the State of Georgia's request to extend the Court's holding in *United States v. Matlock*<sup>32</sup> to include cases where the co-occupant against whom the search is directed is both present and nonconsenting.<sup>33</sup> Rejecting the conclusions of every circuit court and the majority of state supreme courts that had previously considered the issue,<sup>34</sup> the Court held that a warrantless search, conducted pursuant to the consent of a third party co-occupant, in the face of a refusal by a present co-occupant, is unconstitutional as applied to the non-consenting party.<sup>35</sup> Like the Georgia Supreme Court, the majority based its ruling not on the laws of property, but on what it perceived was the common understanding between co-occupants and the social expectations of privacy that exist even in situations of shared premises.<sup>36</sup> Noting that although two co-occupants share the risk that the other will admit obnoxious guests in her absence,<sup>37</sup> "no sensible person" would enter a home on the invitation of one co-occupant while the other stood there and said, "Stay out."<sup>38</sup> When determining reasonableness for Fourth Amendment purposes, courts must look in significant part to commonly held community understandings about how co-tenants may exercise their authority over the property in ways that affect each other's interests.<sup>39</sup> Because common understanding does not recognize

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<sup>30</sup> *United States v. Matlock*, 415 U.S. 164 (1974). Common authority over the premises is derived not from property law, but from "mutual use of the property," which renders it reasonable to recognize the right of any of the co-habitants to "permit inspection in his own right" and that by sharing such privacy with others, one assumes the risk that a co-habitant will permit the police to enter and search the common areas. *Id.* at 172 n.7.

<sup>31</sup> *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).

<sup>32</sup> 415 U.S. at 170. In *Matlock*, the police handcuffed the defendant and placed him in a nearby squad car before requesting and receiving permission from Matlock's co-tenant to search the premises. *Id.* at 166. Holding that it was reasonable for the police to believe that Ms. Graff, who was standing in the entryway to the house with a baby on her hip, possessed common authority over the premises and that her consent was sufficient to constitute a valid search against the defendant, the Supreme Court upheld a warrantless search on the justification that the voluntary consent of a third party, who possessed common authority over, or a sufficient relationship to, the premises sought to be inspected, was valid against an absent, non-consenting co-tenant. *Id.* at 171.

<sup>33</sup> *Randolph*, 126 S. Ct. at 1520.

<sup>34</sup> *Id.* at 1520 & n.1.

<sup>35</sup> *Id.* at 1518.

<sup>36</sup> *Id.* at 1521.

<sup>37</sup> *Id.* at 1521-22.

<sup>38</sup> *Id.* at 1522-23.

<sup>39</sup> *Id.* at 1521.

the right of one tenant to prevail over another in disputes regarding their shared space, the Constitution likewise does not recognize as reasonable a police officer's entry into a home in accordance with the consent of one tenant to the detriment of the express wishes of another.<sup>40</sup>

Countering the dissent's argument that by sharing privacy, an individual retains a reasonable expectation of privacy only to the extent that the person with whom he has chosen to live does not share it with another,<sup>41</sup> Justice Souter, quoting Justice Kennedy's concurrence in *Minnesota v. Carter*, argued that we have "lived our whole national history with the understanding of the ancient adage that a man's home is his castle" and consequentially that the home is entitled to special protections.<sup>42</sup> Here, sufficient options existed to allow the police to both obtain a warrant and preserve the evidence, so that it was unreasonable for them to proceed on the basis of Ms. Randolph's consent alone. The police could have secured the premises and not allowed Mr. Randolph to enter the home unsupervised until a warrant could be obtained,<sup>43</sup> or Ms. Randolph could have gone inside to retrieve the items and brought them out to the police.<sup>44</sup>

The majority also rejected the dissent's argument that the practical effect of its decision would be to impede law enforcement's capacity to protect victims of domestic violence.<sup>45</sup> Dismissing the dissent's concerns, the majority insisted that no limitations were placed on the police's ability to enter a home in the case of exigent circumstances, such as to save an occupant from violence. Instead, the Court drew a distinction between the current issue, namely consent to enter for an evidentiary search only, and the ability of an officer to enter to protect a fearful inhabitant.<sup>46</sup> Noting the tools still available to law enforcement officers in cases of domestic abuse, such as warrantless entry in the face of exigent circumstances, the majority flatly rejected the creation of a domestic violence exception to the warrant requirement.<sup>47</sup>

In his first dissenting opinion for the Supreme Court, Chief Justice Roberts, joined by Justice Scalia, strenuously disagreed with the majority, stressing his belief that the new rule served to protect mere luck and happen-

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<sup>40</sup> *Id.* at 1523.

<sup>41</sup> *Id.* at 1533.

<sup>42</sup> *Id.* at 1524 (citing *Minnesota v. Carter*, 525 U.S. 83, 99 (1998)) (internal quotations omitted).

<sup>43</sup> See *Illinois v. Rodriguez*, 497 U.S. 177 (1990) (upholding police impoundment of defendant's motor home for two hours while obtaining a search warrant on the basis of wife's statements accusing the defendant of drug use and claims of contraband inside the trailer).

<sup>44</sup> See *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (holding that no violation of defendant's Fourth Amendment rights occurred when his wife handed over his clothing and guns to the police without his permission).

<sup>45</sup> *Randolph*, 126 S. Ct. at 1525.

<sup>46</sup> *Id.* at 1526.

<sup>47</sup> *Id.* ("[N]othing in social custom or its reflection in private law argues for placing a higher value on delving into private premises to search for evidence in the face of disputed consent, than on requiring clear justification before the government searches private living quarters over a resident's objection.").

stance over true privacy interests.<sup>48</sup> Pointing to the outcomes in *Matlock* and *Illinois v. Rodriguez*, the dissent emphasized that Fourth Amendment jurisprudence could not support so arbitrary an outcome as to protect the owner who happens to be present to refuse consent, while subjecting the owner sleeping in the next room or sitting in a squad car in front of the house to the whims of his co-occupant.<sup>49</sup> Instead, Chief Justice Roberts argued that the Court's prior decisions had already upheld the constitutionality of warrantless searches conducted pursuant to third-party consent because an individual "assumes the risk that those who have access and control over his shared property might consent to a search."<sup>50</sup> Pointing to decisions upholding third-party consent with regard to the search of objects<sup>51</sup> and the admissibility at trial of information obtained from government eavesdropping on private conversations,<sup>52</sup> Chief Justice Roberts contended that there was no basis for distinguishing the physical search of a shared home from the Court's previous cases.<sup>53</sup> The dissent noted that what was important was not social expectations but whether a person had a reasonable, subjective expectation of privacy, which, in the case of a joint occupancy, was limited by the ability of a co-occupant's authority to grant the police entry in his or her own right.<sup>54</sup> On the basis of this limited privacy expectation, a warrantless search was constitutional if it was conducted pursuant to the voluntary consent of one occupant despite the objection of a present co-occupant.<sup>55</sup>

Chief Justice Roberts also emphasized the negative consequences of what he deemed to be the arbitrariness of the majority's new rule, pointing to recurring cases of domestic abuse where one spouse wishes to authorize police entry in the face of opposition by a nonconsenting abuser.<sup>56</sup> If the abuser's behavior failed to rise to the level of creating an exigent circum-

<sup>48</sup> *Id.* at 1536 (Roberts, C.J., dissenting).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 1534. "The point, of course, is not that a person waives his privacy by sharing space with others such that the police may enter at will, but that sharing space necessarily entails a limited yielding of privacy to the person with whom the space is shared, such that the other person shares authority to consent to a search of the shared space." *Id.* at 1535 n.1.

<sup>51</sup> *Frazier v. Cupp*, 394 U.S. 731 (1969) (upholding the use of evidence against two cousins obtained during a search of a duffel bag used jointly by both, even though the consent of only one cousin had been obtained).

<sup>52</sup> *United States v. White*, 401 U.S. 745, 752 (1971) (upholding the admissibility against the defendant of evidence obtained while the government was eavesdropping pursuant only to the consent of the person with whom he was conversing).

<sup>53</sup> *Randolph*, 126 S. Ct. at 1534 (Roberts, C.J., dissenting).

<sup>54</sup> *Id.* at 1532.

<sup>55</sup> *Id.* at 1531.

<sup>56</sup> *Id.* at 1537 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 179 (1990); *United States v. Donlin*, 982 F.2d 31 (1st Cir. 1992); *United States v. Hendrix*, 595 F.2d 883 (D.C. Cir. 1979); *People v. Sanders*, 904 P.2d 1311 (Colo. 1995); *Brandon v. State*, 778 P.2d 221 (Alaska Ct. App. 1989)). In each of the cited cases police officers investigating reports of domestic abuse faced conflicting responses from co-occupants regarding the officers' request to search or enter the premises. See *infra* notes 67–73 and accompanying text for further discussion of these cases.

stance, the police would, under the majority's holding, be unable to enter the home and assist in domestic disputes if the abuser objected.<sup>57</sup> Disagreeing with the majority that the doctrine of exigent circumstance would be sufficient to ensure that police would be able to enter a home to protect a victim of domestic abuse who requested it, Chief Justice Roberts argued that the majority's concept of the doctrine actually created a new, lower standard for exigency, allowing police to enter when they have a "good reason to believe that violence (or the threat of violence) has just occurred or is about to (or soon will) occur."<sup>58</sup>

#### IV.

At the heart of the Court's divide in *Randolph* are not only different notions of privacy under the Fourth Amendment; the Court also split on how to balance the need to recognize the pervasive occurrence of domestic violence and the unique challenges it presents to law enforcement on the one hand, and the administrative and philosophical difficulties of expanding the consent exception to the warrant requirement to include special treatment for situations of domestic dispute on the other. In reaching its conclusion that an individual, even an alleged abuser, must be allowed to assert his or her right to be free from unreasonable searches, the Court properly drew a fine, but functional, line balancing the interests of law enforcement officers and potential victims of domestic abuse with an individual's Fourth Amendment rights. While the Court admitted that the distinction it drew was pure formalism,<sup>59</sup> this formal line drawing has an important functional role, providing police on the scene with clear guidelines for carrying out their investigations in accordance with the requirements of the Fourth Amendment.

The Court's concern regarding domestic violence against women is well supported. Results from the National Violence Against Women Surveys place the number of incidents of intimate partner violence (IPV) occurring against women over the age of eighteen in the United States at 5.3 million per year,<sup>60</sup> affecting 1.3 million women per year.<sup>61</sup> Approximately 22.1%, or

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<sup>57</sup> *Randolph*, 126 S. Ct. at 1538 (Roberts, C.J., dissenting). Chief Justice Roberts used as an example *United States v. Davis*, 290 F.3d 1239, 1240–41 (10th Cir. 2002), in which the appellate court found no exigent circumstances to justify a warrantless entry when officers, on responding to a complaint of domestic abuse, were refused entry after the defendant first denied his wife was home, and then, after appearing, she resisted his attempts to close the door.

<sup>58</sup> *Id.* at 1539 (internal quotations omitted).

<sup>59</sup> *Id.* at 1527.

<sup>60</sup> U.S. DEP'T HEALTH & HUMAN SERVS. ET AL., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2003). Intimate partner violence is defined as "violence committed by a spouse, ex-spouse, or current or former boyfriend or girlfriend." *Id.* at 3.

<sup>61</sup> PATRICIA TJADEN & NANCY THOENNES, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN iv (2000).

one in five, American women have suffered some form of IPV in their lifetimes, while one in fourteen men report suffering similar abuse.<sup>62</sup> In the United States in 2001, IPV constituted 20% of all violent crimes against women,<sup>63</sup> and “family disturbance calls . . . constitute[d] the largest single category of calls received by police departments [that] year.”<sup>64</sup> In light of these compelling statistics, the Court was rightfully concerned about the detrimental effects of erecting additional obstacles in the path of the police responding to reports of domestic violence.

Despite the magnitude of this problem in the United States, however, the *Randolph* dissent is unpersuasive in its assertion that the majority’s rule undermines the ability of police officers to protect victims of domestic violence who share a residence with their abusers.<sup>65</sup> Not one of the cases cited by the dissent supports its contention that “the most serious consequence of the majority’s rule is its operation in domestic abuse situations.”<sup>66</sup> In fact, each of these cases is easily distinguishable from *Randolph*, and in none of them would the result have been changed by the Court’s decision.<sup>67</sup> For example, in *United States v. Hendrix*, on responding to a report of domestic violence, the police arrived at the scene to find the defendant’s wife downstairs after having escaped a day-long violent argument with her husband, while the defendant remained barricaded upstairs with the couple’s child and a sawed-off shotgun, which he had already fired out the window earlier that day.<sup>68</sup> After upholding under *Matlock* the officers’ entry and search of the defendant’s apartment on the basis of the wife’s consent (after the husband’s refusal), the court found in the alternative the existence of exigent circumstances sufficient to justify warrantless entry on the grounds of the danger to human life (the baby) and concern that the defendant would dispose of the contraband (the shotgun) before a warrant could be obtained.<sup>69</sup>

Likewise, in *Brandon v. State*, the wife had already escaped to an emergency women’s shelter before signing a consent form to search the home she shared with the defendant.<sup>70</sup> That case is inapplicable to the dissent’s concerns, because the victim had already escaped her abuser before granting

<sup>62</sup> *Id.* at 26.

<sup>63</sup> U.S. DEP’T OF JUSTICE, INTIMATE PARTNER VIOLENCE, 1993–2003 1 (Feb. 2003).

<sup>64</sup> *Randolph*, 126 S. Ct. at 1530 (Breyer, J., concurring).

<sup>65</sup> *Id.* at 1538 (Roberts, C.J., dissenting) (“The majority’s rule apparently forbids police from entering to assist with a domestic dispute if the abuser whose behavior prompted the request for police assistance objects.”).

<sup>66</sup> *Id.* at 1537.

<sup>67</sup> See *Illinois v. Rodriguez*, 497 U.S. 177, 177 (1990) (Defendant was sleeping in the next room and so was neither present nor refusing consent to search.); *People v. Sanders*, 904 P.2d 1311 (1995) (Defendant’s co-occupant signed a consent to search form after already leaving the premises, and defendant neither consented nor objected to the search.); *United States v. Davis*, 290 F.3d 1239, 1239 (10th Cir. 2002) (Neither husband nor wife consented to search.).

<sup>68</sup> 595 F.2d 883, 884–85 (D.C. Cir. 1979).

<sup>69</sup> *Id.* at 885–86.

<sup>70</sup> 778 P.2d 221 (Alaska Ct. App. 1989).

consent, and the police were free to use her statements to obtain a warrant before proceeding with the search against the defendant's wishes. Finally, in *City of Laramie v. Hysong*, witnesses saw the defendant forcibly jerk his child by the arm and spank him in the parking lot of a convenience store.<sup>71</sup> When the police arrived that night at the defendant's house to investigate, they requested and were refused entry to check the child's condition.<sup>72</sup> The court found exigent circumstances sufficient to support a warrantless entry even in the absence of consent (though here again the wife consented to police entry and the husband did not) in order "to render emergency aid to a person reasonably believed to be in distress and in need of assistance" (in this case, the child).<sup>73</sup> If the rule introduced by the Court were so repugnant to law enforcement efforts to combat domestic violence, the dissent should have been able to point to at least one case where the *Randolph* rule would have led to a different outcome.

The dissent sought to further undermine the majority's analysis by charging that the majority created a new exception to the warrant requirement in the form of a "consent plus a good reason" rule.<sup>74</sup> On the contrary, the Court merely distinguished between the application of its rule, i.e., that "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,"<sup>75</sup> to situations where the police are requesting entry *to search* and to situations where entry is for the purposes of providing protection for one occupant from another.<sup>76</sup> Permitting the police to enter in order to protect a battered spouse as she collects her belongings is not the same as granting the police permission to conduct a general search of the premises. Far from creating a new exception to the warrant requirement, the majority merely acknowledged in dicta that when confronted with cases of domestic violence, a police officer may enter the home at the request of the battered occupant for the purposes of protection without later being subject to charges of trespass.<sup>77</sup> It is this dicta that Chief Justice Roberts confused with the creation of a new "consent plus a good reason" exception. While the majority's discussion of this issue is brief, the point is clear that its holding in *Randolph* should not be taken as having an impact on law enforcement's ability to *protect* victims of domestic violence.

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<sup>71</sup> 808 P.2d 199, 201 (1991).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 203.

<sup>74</sup> *Georgia v. Randolph*, 126 S. Ct. 1515, 1538 (2006) (Roberts, C.J., dissenting) ("In response to the concern that police might be turned away under its rule before entry can be justified based on exigency, the majority creates a new rule: A 'good reason' to enter, coupled with one occupant's consent, will ensure that a police officer is 'lawfully in the premises.'").

<sup>75</sup> *Id.* at 1528.

<sup>76</sup> *Id.* at 1525.

<sup>77</sup> *Id.*

As apparent by the analysis above, sufficient tools, unaltered by the Court's decision and previously held constitutional under the Fourth Amendment, remain at the disposal of law enforcement to aid them in effectively protecting victims of domestic violence. When present, exigent circumstances remain a viable justification for warrantless entry. While the dissent believes the exigent circumstances doctrine is insufficient to adequately protect victims of domestic abuse,<sup>78</sup> the doctrine has been employed to justify police entry in the absence of a warrant or consent in cases of domestic dispute.<sup>79</sup> In the absence of exigent circumstances, as in *Randolph*, when one partner accuses the other of keeping evidence of illegal activity in the house, the accusing partner is free to return inside and bring the evidence out to the police, instead of the police entering the home to conduct a general search.<sup>80</sup> As an alternative, under *Illinois v. McArthur*,<sup>81</sup> the police may impound the premises and refuse unchaperoned entry to the nonconsenting party until a search warrant can be obtained if they (1) have probable cause to believe the residence contains evidence of a crime or contraband, (2) reasonably believe that, unless restrained, the nonconsenting party would destroy or dispose of the evidence, and (3) make reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy.<sup>82</sup> Finally, the police may also use the co-occupant's statements to support probable cause to obtain a warrant from a neutral magistrate. The variety of options available to the police ensure that in the majority of circumstances either there will be exigent circumstances sufficient to support lawful entry or the police in all likelihood will be able to obtain a search warrant without risking loss of the evidence.

Although some may dismiss the Court's reasoning as mere hair-splitting—a co-occupant cannot invite the police inside, but can bring evidence

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<sup>78</sup> *Id.* at 1538 (Roberts, C.J., dissenting). In support of its contention, the dissent cited *United States v. Davis*, 290 F.3d 1239, 1240–41 (10th Cir. 2002). In *Davis*, the court denied the existence of exigent circumstances when, upon responding to a report of domestic abuse, the defendant first denied his wife was home and then, once she appeared, tried to close the door on the police while the wife resisted. *Id.* at 1241. However, this case is irrelevant under *Randolph*, because in *Davis* both the husband and wife refused consent. *Id.* In addition, in *Randolph* the majority clearly refuted the suggestion that its holding applies to instances in which one party requests police protection from the other, limiting its application to cases involving entry for evidentiary search. *Randolph*, 126 S. Ct. at 1517.

<sup>79</sup> See *United States v. Hendrix*, 595 F.2d 883, 883 (D.C. Cir. 1979); *City of Laramie v. Hysong*, 808 P.2d 199, 199 (1991).

<sup>80</sup> *Coolidge v. New Hampshire*, 403 U.S. 443, 443 (1971). In *Coolidge*, while questioned by the police about her husband's activity, the defendant's wife voluntarily retrieved several articles of his clothing and several of his guns and turned them over to the police, believing her husband had nothing to hide and that doing so would clear him. In rejecting the defendant's claim that the police's actions, through his wife, violated his Fourth Amendment rights against search and seizure, the Court held that the wife was not acting as an agent of the state when she volunteered the items, and therefore no violation could have taken place.

<sup>81</sup> 531 U.S. 326 (2001).

<sup>82</sup> *Id.* at 331–32.

out to them; a person who happens to be present will be protected from his co-occupant's consent, but if he is sleeping in the next room or sitting in a squad car outside the door, he will not be—the distinctions are important ones, carefully balancing the desire to encourage citizen cooperation and facilitation of police investigations while protecting individuals from general unreasonable or warrantless search of private quarters. Formal line drawing by the Court is a common feature of Fourth Amendment jurisprudence that acts as an important practical guide to law enforcement agents on the ground.<sup>83</sup> Although the dissent also offers a clear rule—voluntary consent of any person with common authority over the premises allows the police to lawfully conduct a search, regardless of the objections of his or her co-occupants—the majority's fine line both appropriately protects the interests of all parties involved and offers simple clarity in its formalism.

## V.

In light of the different courses of action available to the police when dealing with domestic disputes (violent or not), the majority was correct in stating that “if a rule crediting consent over denial of consent were built on hoping to protect household victims, it would distort the *Fourth Amendment* with little, if any, constructive effect on domestic abuse investigations.”<sup>84</sup> Instead, the Court took the proper course by recognizing the “practical value in the simple clarity of complementary rules” and clearly establishing that when two individuals share common authority over a single property, each retains his or her Fourth Amendment right to be free from unreasonable searches and seizures, so that “neither one is master possessing the power to override the other's constitutional right to deny entry to their castle.”<sup>85</sup> While recognizing the unique requirements of domestic abuse situations, the Court correctly refused to extend the consent exception to the warrant requirement and reaffirmed the importance of the Fourth Amendment rights of all citizens, even those accused of intimate partner abuse. The majority properly balanced the needs of law enforcement officers and victims of domestic violence against the requirements of the Fourth Amendment in establishing a bright-line rule recognizing that one co-occupant may not waive the rights of another present, objecting co-occupant to be free from unreasonable search and seizure.

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<sup>83</sup> See, e.g., *United States v. Karo*, 468 U.S. 705 (1984) (drawing a line disallowing the warrantless use of electronic monitoring devices inside defendant's home even though use of such devices would not require a warrant in other situations, such as when defendant was in a public place).

<sup>84</sup> *Georgia v. Randolph*, 126 S. Ct. 1515, 1526 n.7 (2006).

<sup>85</sup> *Id.* at 1529 (Stevens, J., concurring).

