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## Fernandez v. California

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### ***Georgia v. Randolph Does Not Prevent One Occupant From Giving Valid Consent After The Occupant Who Refused Consent Has Been Removed From The Premises***

In *Fernandez v. California*, No. 12-7822 (Feb. 25, 2014), the issue before the Supreme Court was whether the decision in *Georgia v. Randolph*, 547 U.S. 103 (2006) extends to prevent one occupant from giving valid consent after another occupant who refused consent has been removed from the premises. The evidence showed that police observed a suspect in a violent robbery run into an apartment building and heard screams coming from one of the apartments. After back-up arrived, the officers knocked on the door of the apartment from which the screams were heard. Rojas answered the door. She appeared to be battered and bleeding. When the officers asked her to step out of the apartment so they could do a protective sweep, Fernandez came to the door and objected. The officers arrested Fernandez, who they believed assaulted Rojas. He was then identified as a suspect in the robbery and taken to the police station. An hour later, officers returned to the apartment and Rojas gave consent to search. Evidence of the robbery was discovered and seized at that time.

Fernandez argued that even though he was not present when Rojas gave her consent to search, *Randolph* nevertheless controls and therefore, the consent given by Rojas was invalid. The Court disagreed. Police officers may search jointly occupied premises if one of the occupants consents. In *Randolph*, the Court recognized a “narrow exception” to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search. However, the Court stated, the *Randolph* decision “went to great lengths to make clear that its holding was limited to situations in which the objecting occupant is [physically] present.”

Fernandez argued that his physical presence was not necessary because the police were responsible for his absence. The Court acknowledged that the *Randolph* decision contained dictum that suggested that consent by one occupant might not be sufficient if “there was evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection.” *Randolph*, 547 U.S. at 121. But, the Court stated, “[t]he *Randolph* dictum is best understood not to require an inquiry into the subjective intent of officers who detain or arrest a potential objector but instead to refer to situations in which the removal of the potential objector is not objectively reasonable.” Thus, the Court held, an occupant who is absent due to a lawful detention or arrest “stands in the same shoes as an occupant who is absent for any other reason.”

Accordingly, the Court found, putting aside the *Randolph* exception, the lawful occupant of a residence should have the right to invite law enforcement to enter to conduct a search. “Any other rule would trample on the rights of the occupant who is willing to consent.” In fact, the Court concluded, denying a victim of domestic violence, like Rojas, “the right to allow police to enter *her* home would...show disrespect for her independence. Having beaten Rojas, [Fernandez] would bar her from controlling access to her own home until such time as he chose to relent. The Fourth Amendment does not give him that power.” (Emphasis in original).